

No. 03-20-00498-CV

**In the Court of Appeals for the Third Judicial District
Austin, Texas**

3rd COURT OF APPEALS
AUSTIN, TEXAS

10/21/2020 11:53:32 AM

JEFFREY D. KYLE
Clerk

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF
TEXAS; RUTH HUGHS, IN HER OFFICIAL CAPACITY AS TEXAS
SECRETARY OF STATE,

Appellants,

v.

THE ANTI-DEFAMATION LEAGUE AUSTIN, SOUTHWEST, AND
TEXOMA REGIONS; COMMON CAUSE TEXAS; ROBERT KNETSCH,

Appellees.

On Appeal from the
353d Judicial District Court, Travis County

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ORAL ARGUMENT REQUESTED

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RECORD REFERENCES

“CR” refers to the clerk’s record; “S.CR.” refers to the supplemental clerk’s record; and “RR” refers to the reporter’s record, with the volume number preceding the “RR” and the page citation following it.

STATEMENT OF THE CASE

Nature of the Case: On July 27, 2020, the Governor issued a Proclamation creating unprecedented new options for registered voters to cast their ballots in the current election. Plaintiffs assert that the Governor exceeded his authority under the Texas Disaster Act and the Texas Constitution when he issued a Proclamation on October 1, clarifying his own proclamation. CR.137–41.

Trial Court: 353rd Judicial District Court, Travis County
The Honorable Tim Sulak

Course of Proceedings and Trial Court Disposition: Plaintiffs filed one of three suits against the Governor and asked the trial court to enjoin enforcement of a single paragraph of the October 1 Proclamation. CR.3; CR.7. The other two suits are pending in federal court. The Governor promptly filed a plea to the jurisdiction. CR.83. Shortly before the hearing on the Governor’s plea and plaintiffs’ application for temporary injunction, the federal court dismissed claims against the Governor because he does not enforce the October 1 Proclamation, and plaintiffs here moved to amend their pleading and add the Secretary of State as a defendant. CR.186. The Secretary appeared at the hearing, and the Court gave leave for the Secretary to file a plea to the jurisdiction to be considered at the same time as the parties’ pending motions. 2.RR.33–35. The trial court subsequently denied both the Governor and Secretary’s pleas to the jurisdiction and issued a temporary injunction. CR.205–06. The State filed an immediate notice of appeal. CR.208-13.

STATEMENT REGARDING ORAL ARGUMENT

Because the trial court sustained constitutional challenges to the Governor's Proclamation regarding voting opportunities, the Court's decisional process may benefit from oral argument. In Appellants' view, however, settled precedent mandates reversal.

ISSUES PRESENTED

1. Standing requires the plaintiff to have an actual or imminent injury-in-fact fairly traceable to the conduct of the defendant that is likely to be redressed by a favorable decision. Did the trial court err by holding that the plaintiffs had standing to sue the Governor and Secretary of State over proclamations that expand voting opportunities, which neither the Governor nor Secretary of State enforces?

2. To fall within the *ultra vires* exception to sovereign immunity, the plaintiffs must demonstrate that the defendant official acted without legal authority or failed to perform a purely ministerial act. The Governor's proclamations expanding voting opportunities rested on legal authority found in the Texas Disaster Act. Did the trial court err by holding that the plaintiffs' claims overcame the Governor and Secretary of State's sovereign immunity from suit?

3. Entitlement to an injunction requires demonstrating a cause of action and a probable, imminent, and irreparable injury, as well as showing that the public interest

favors issuance. In the proclamations, Governor Abbott invoked his authority under the Texas Disaster Act to suspend part of a provision of the Election Code to allow eligible voters to hand-deliver mail-in ballots to their local county's designated office at any time prior to Election Day, thereby providing eligible voters with as many as *40 additional days* in which to hand-deliver a mail-in ballot. Did the trial court err by ignoring the first of two related proclamations and holding that the plaintiffs made the requisite showing to issue a temporary injunction, including a holding that the second proclamation improperly abridged the right to vote?

STATEMENT OF FACTS

A. Under the Election Code, voting by delivery of a marked ballot in person is only permitted on election day.

“The history of absentee voting legislation in Texas shows that the Legislature has been both engaged and cautious in allowing voting by mail.” *In re State*, 602 S.W.3d 549, 558 (Tex. 2020). Texas law allows voting by mail for registered voters who meet one of the qualifications stated in the Election Code. *See* TEX. ELEC. CODE ch. 82. A voter is qualified to vote by mail if he (1) anticipates being absent from his county of residence on election day; (2) has an illness or other physical condition that disables him from appearing at the polling place; (3) is 65 or older; or (4) is confined in jail. TEX. ELEC. CODE §§ 82.001–.004.

The early-voting clerk is responsible for conducting early voting and must “review each application for a ballot to be voted by mail.” *Id.* § 86.001(a). Each early-voting clerk is responsible for determining whether an application to vote by mail complies with all requirements, providing notice and cure instructions to a voter who submits a noncompliant application, and “provid[ing] an official ballot envelope and carrier envelope with each ballot provided to a voter” who properly completes an application. *Id.* §§ 86.001(a), .008, .009, .002(a). After a voter marks their mail-in ballot, they must return it to the early-voting clerk in the official carrier envelope. *Id.* § 86.006(a).

Prior to 2015, the Texas Election Code provided voters with only two methods by which to return their ballots: mail, and common or contract carrier. Voters who received a mail-in ballot but decided not to vote by mail effectively had only two options: return the mail-in ballot (unused) and vote in person, TEX. ELEC. CODE § 84.032(d), or vote provisionally, *id.* § 63.011(a-1). That changed with the passage of House Bill 1927, which amended Section 86.006 to give voters a limited option of in-person delivery. *See* Acts 2015, 84th Leg., ch. 1050 (H.B. 1927), § 7, eff. Sept. 1, 2015;¹ 2.RR.229–30. Specifically, a “voter may deliver a marked ballot in person to the early voting clerk’s office *only while the polls are open on election day.*” TEX. ELEC. CODE § 86.006(a-1) (emphasis added). “A voter who delivers a marked ballot in person must present an acceptable form of identification described by Section 63.0101.” *Id.* From the law’s passage in 2015 until earlier this year, no early voting clerk organized multiple locations for mail-in ballot delivery in a single county. 2.RR.229–30.

B. During the pandemic, the Governor has acted to ensure the safety and integrity of Texas elections by increasing options for early voting.

The coronavirus pandemic reached American shores in early 2020 and Texas in March. The Governor first declared a statewide disaster on March 13, 2020.

¹ *See also* Texas Legislature Online, HB 1927 (84th Regular Session) Bill History, publicly available here: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=84R&Bill=HB1927> (last accessed October 21, 2020).

CR.123–25 (Proclamation of March 13, 2020). In the ensuing seven months, the declaration of disaster has been renewed multiple times. *E.g.* CR.134–36. As the Fifth Circuit explained early in the pandemic:

[W]hen faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some real or substantial relation to the public health crisis and are not beyond all question, a plain, palpable invasion of rights secured by the fundamental law. Courts may ask whether the state’s emergency measures lack basic exceptions for extreme cases, and whether the measures are pretextual—that is, arbitrary or oppressive. At the same time, however, courts may not second-guess the wisdom or efficacy of the measures.

In re Abbott, 954 F.3d 772, 784–85 (5th Cir. 2020) (citations and internal quotation marks omitted).

Using the emergency powers granted by the Disaster Act, the Governor has taken numerous actions to protect Texans, including when they go to the polls. The Governor expanded the early-voting period for all July 14 elections so “election officials can implement appropriate social distancing and safe hygiene practices.” CR.126–29 (Proclamation of May 11, 2020). On July 27, the Governor issued the first of two proclamations at issue in this case (“the July 27 Proclamation”) extending the early voting options for the November general election. CR.130–33. In the July 27 Proclamation, the Governor found that “in order to ensure that elections proceed efficiently and safely . . . it is necessary to increase the number of

days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices.” CR.131.

The July 27 Proclamation suspended two provisions of the Election Code. It suspended Section 85.001(a), which sets the time period for early voting, “to the extent necessary” to allow “early voting by personal appearance [to] begin on Tuesday, October 13, 2020. CR.132. And it suspended “section 86.006(a-1) . . . to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day.” CR.132. Whereas Section 86.001(a-1) would otherwise permit this only on election day, the July 27 Proclamation’s second suspension thus allowed a voter who was otherwise eligible to vote by mail to personally return the marked mail ballot *at any time up to* and including election day. *See id.*; 2.RR.229. The July 27 Proclamation did not address election day and did not alter or otherwise affect the other applicable requirements in the Election Code, including the requirement that an individual returning a marked mail ballot in person to the early voting clerk’s office present a valid form of photo identification. *See id.*

After the Governor issued the July 27 Proclamation, the Secretary of State became aware of four counties (Travis, Fort Bend, Galveston, and Harris) that

intended to offer multiple mail-in delivery locations return of marked mail ballots for the November 2020 election. 2.RR.230. Unlike Harris County, however, not all of them intended to use locations that would qualify as the early voting clerk's office, which is the delivery site authorized under the Election Code. In particular, Fort Bend County intended to utilize the County Clerk's offices as delivery locations—even though the County Clerk is not the early-voting clerk in Fort Bend County. As a result, the County Clerk's offices in that county were not “early voting locations” as required by statute; any ballots delivered to such locations could not be properly counted.² 2.RR.231.

After the Secretary's Director of the Elections Division heard about Fort Bend's intent to offer in-person delivery locations that were not authorized by the Election Code, he spoke to the Fort Bend Elections Administrator. 2.RR.228, 2.RR.230–31. In their conversation, the Fort Bend Elections Administrator indicated that Fort Bend planned on utilizing the County Clerk's offices as ballot

² By default, “[t]he county clerk is the early voting clerk for the county.” TEX. ELEC. CODE § 83.002. When the county clerk serves as the early voting clerk (as he does in Harris County), a county clerk's annex office can be used as a delivery location under Section 86.006(a-1). However, Chapter 31 of the Texas Election Code authorizes creation of a county election administrator to perform the duties and functions placed on the county clerk, including acting as the county's early voting clerk. *See* TEX. ELEC. CODE § 31.043. Many counties, including Fort Bend, have availed themselves of this statute. 2.RR.236; <https://www.sos.state.tx.us/elections/voter/county.shtml> (listing early voting clerks). When the election administrator is the early-voting clerk, only the administrator's offices can be used as delivery sites, not the county clerk's offices. 2.RR.235–36. And by the Election Code's plain language permits only the early-voting clerk's office to receive in-person delivery of mail-in ballots. TEX. ELEC. CODE § 86.006(a-1).

delivery locations even though those were “not his offices” and thus were not permissible under the Election Code. 2.RR.230; *see* TEX. ELEC. CODE § 86.001(a-1) (requiring voters to deliver ballots to the “early voting clerk’s office”). In this conversation, the Elections Administrator even acknowledged that the use of those offices for delivery of mail-in ballots would be illegal, but that Fort Bend intended to use them anyway. 2.RR.230.

Under state law, counties have no obligation to report to the Secretary when they intend to set up a delivery location for mail-in ballots, so it is unclear whether more counties intended to offer additional mail-in delivery locations. 2.RR.232. The Secretary knew about four counties that intended to operate annex locations for in-person mail ballot delivery. 2.RR.230. And one-in-four planned to do so without statutory authorization, risking an election contest. 2.RR.231–32. This in turn raised a serious concern that other counties might be planning to do something similar unbeknownst to the Secretary. *See* 2.RR.232. And the Secretary only has authority to advise counties that they are putting their election at risk of a contest, as it did with Fort Bend. 2.RR.232. The Secretary lacks enforcement power to stop them. 2.RR.232.

Another specific concern that arose after the Governor issued the July 27 Proclamation stemmed from the questionable statutory authority to locate poll

watchers at the offices of early-voting clerks. Poll watchers play an important role in election security, but the Election Code does not specifically provide for poll watchers to be present at County Clerks' offices, let alone ahead of election day. *See* 2.RR.229. This is unsurprising: The Election Code does not typically allow for delivery of ballots ahead of Election Day. Moreover, the statute listing the locations where watchers could be located was last amended in 1991, and thus predated the 2015 statute authorizing mail-in ballot delivery. *See* TEX. ELEC. CODE § 33.007(a); Acts 1991, 72nd Leg., ch. 554, § 10, eff. Sept. 1, 1991.³ The poll-watcher statute does not contemplate voting by delivering mail-in ballots in person, much less *en masse* prior to election day and at annex offices. And because early-voting clerks may take only such action as permitted by state law, this created an important gap in election security. *Cf. State v. Hollins*, No. 20-0729, 2020 WL 5919729, at *4 (Tex. Oct. 7, 2020) (“Because Hollins acts on behalf of Harris County, he possesses only

³ TEX. ELEC. CODE § 33.007(a) (“Each appointing authority may appoint not more than two watchers for each precinct polling place, meeting place for an early voting ballot board, or central counting station involved in the election.”); *see also id.* § 33.052(a) (“A watcher at a precinct polling place may begin service at any time after the presiding judge arrives at the polling place on election day and may remain at the polling place until the presiding judge and the clerks complete their duties there.”); *id.* § 33.053 (“A watcher serving at an early voting polling place may be present at the polling place at any time it is open and until completion of the securing of any voting equipment used at the polling place that is required to be secured on the close of voting each day.”); *id.* § 33.054(a) (“A watcher serving at the meeting place of an early voting ballot board may be present at any time the board is processing or counting ballots and until the board completes its duties.”); *id.* § 33.055(a) (“A watcher serving at a central counting station may be present at any time the station is open for the purpose of processing or preparing to process election results and until the election officers complete their duties at the station.”).

those powers ‘granted in express words’ or ‘necessarily or fairly implied in’ an express grant—powers ‘not simply convenient’ but ‘indispensable.’”).

To address these disparate and potentially dangerous practices, the Governor issued a proclamation on October 1, 2020, clarifying that the suspension of section 86.006(a-1) to allow more time for hand-delivery of mail-in ballots applies only when an eligible mail-ballot voter is, prior to Election Day, hand-delivering a mail ballot (1) at a county’s single designated delivery location, which (2) can be monitored by poll watchers. *See generally* CR.137–41 (Proclamation of October 1, 2020). The Proclamation adds substantially more time in which eligible voters can hand-deliver mail-in ballots leading up to Election Day, and do not address or affect what the Election Code allows on Election Day itself, or the ability of any eligible mail-in ballot voter to simply place the ballot in the mail.

In doing so, the Governor advanced the State’s weighty interests in clarifying any confusion, reintroducing uniformity in the interpretation and application of the Election Code, and ensuring ballot security.

C. Procedural History

Within days of the October 1 Proclamation, three sets of plaintiffs brought suit against the Governor and the Secretary. Two were brought in federal court, one here. These Plaintiffs bring three claims challenging the Governor’s October 1

Proclamation allowing voters to deliver marked mail ballots prior to election day if they do so at a single early voting clerk's office location: First, Plaintiffs contend that the proclamation is *ultra vires* because it is not authorized by the Disaster Act; second, they contend that the proclamation infringes on the right to vote in violation of Article 1, Section 3 of the Texas Constitution; and third, they contend that the proclamation violates equal protection and constitutes arbitrary disenfranchisement in violation of Article 1, Section 3.

The Governor promptly filed a plea to the jurisdiction. CR.83. Shortly before the hearing on the Governor's plea and plaintiffs' application for temporary injunction, the federal court dismissed claims against the Governor because "Plaintiffs cannot establish that Governor Abbott caused their enforcement-based injury or that enjoining certain activities by Abbott would redress their injury." *Tex. League of United Latin Am. Citizens v. Abbott*, 1:20-CV-1006-RP, 2020 WL 5995969, at *13 (W.D. Tex. Oct. 9, 2020). Plaintiffs here moved to amend their pleading and add the Secretary as a defendant. CR.186.

The trial court held a hearing on October 13. *See generally* 2.RR.1. The Secretary appeared at the hearing, and the Court gave leave for the Secretary to file a plea to the jurisdiction to be considered at the same time as the parties' pending motions. 2.RR.33-35. The trial court subsequently denied both the Governor and

Secretary's pleas to the jurisdiction and issued a temporary injunction. CR.205-06. The State filed an immediate notice of appeal. CR.208-13.

SUMMARY OF THE ARGUMENT

The trial court erred in determining it had subject-matter jurisdiction to hear these claims for two reasons. *First*, Plaintiffs lacked standing to bring their claims because (1) all Plaintiffs lacked an injury-in-fact; (2) the purported injury is not fairly traceable to the Governor or Secretary; and (3) the two organizational plaintiffs lacked associational standing to bring claims on behalf of members, Texas courts do not recognize organizational standing, and the evidence would not support its application here even if that were otherwise. *Second*, Plaintiffs' claims do not state a viable *ultra vires* claim; therefore, Appellants are entitled to sovereign immunity. And, for the Secretary specifically, Plaintiffs did not even attribute any unlawful actions to her, whether in pleadings or in the evidence presented to the trial court.

The trial court erred on the merits as well. Plaintiffs did not demonstrate a probable right to the relief sought, nor a probable, imminent, and irreparable injury. On the probable right to relief sought, the Governor did not act *ultra vires* in amending the scope of his prior proclamation, which expanded the time period for individuals to deliver a marked mail ballot to the early voting clerk's office pursuant to his Disaster Act authority. Nor did the Governor infringe on Plaintiffs' right to

vote or violate equal protection principles. The July 27 and October 1 Proclamations work in tandem with each other and with provisions of the Election Code, as well as the Governor’s proclamations, to ensure robust opportunities for Texans to exercise the franchise in the forthcoming general election.

Plaintiffs also failed to demonstrate that they face an imminent injury. Plaintiffs’ own evidence demonstrates numerous alternatives are available to them to cast a ballot in the election currently underway; the only injuries were based on witness speculation about what *could* happen, unsupported by evidence. Finally, equitable factors weighed against issuing injunctive relief; the State has a strong interest in ensuring the integrity of its elections, and the Governor’s proclamations further that aim.

ARGUMENT

A. Plaintiffs lack standing to sue either the Governor or the Secretary.

“The Constitution is not suspended when the government declares a state of disaster.” *In re Abbott*, 601 S.W.3d 802, 805 (Tex. 2020) (orig. proceeding) (per curiam). And because the Constitution is not suspended, “constitutional limitations on the jurisdiction of courts” remain in force. *Id.* As the Texas Supreme Court recently reaffirmed, “[o]ne such limitation is the requirement that a plaintiff establish standing.” *Id.* The Texas Constitution’s separation of powers “prohibit[s]

courts from issuing advisory opinions because such is the function of the executive rather than judicial department.” *Tex. Ass’n of Bus. v. Texas Air Ctr. Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). As a component of subject-matter jurisdiction, questions of standing are reviewed de novo. *Farmers Tex. Cty. Mutual Ins. Co. v. Bealey*, 598 S.W.3d 237, 240 (Tex. 2020). Here, Plaintiffs lacked standing to sue either the Governor or Secretary.

“Subject matter jurisdiction requires that the party bringing the suit have standing, that there be a live controversy between the parties, and that the case be justiciable.” *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994). “A court has no jurisdiction over a claim made by a plaintiff who lacks standing to assert it.” *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012). Standing “require[s] an actual, not merely hypothetical or generalized grievance.” *Brown v. Todd*, 53 S.W.3d 297, 302 (Tex. 2001). To the extent not contradicted by state law, Texas courts “look to the more extensive jurisprudential experience of the federal courts on the subject [of standing] for any guidance it may yield.” *Tex. Ass’n of Bus.*, 852 S.W.2d at 444.

Plaintiffs have the burden to demonstrate standing. To have standing, the plaintiff must meet three elements:

1. The plaintiff must have suffered an injury in fact—an invasion of a legally protected or cognizable interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;
2. There must be a causal connection between the injury and the conduct complained of—that is, the injury must be fairly traceable to the challenged action of the defendant and not the independent action of a third party not before the court; and
3. It must be likely, and not merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992); *Brown*, 53 S.W.3d at 305 (referencing *Lujan*); *Heckman*, 369 S.W.3d at 155. Moreover, “[s]ince they are not mere pleading requirements but rather an indispensable part of the plaintiff’s case, each element must be supported . . . with the manner and degree of evidence required at the successive stages of litigation.” *Lujan*, 504 U.S. at 560–61. Since this is a temporary injunction, Plaintiffs must make a clear showing on each element. *See, e.g., Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017).

1. Plaintiffs have not demonstrated an individualized, non-speculative harm sufficient to support standing.

It is well-settled that to establish standing to seek redress for injury, “a plaintiff must be personally aggrieved.” *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304 (Tex. 2008) (citing *Nootsie, Ltd. v. Williamson Cty. Appraisal Dist.*, 925 S.W.2d 659, 661 (Tex. 1996)). The plaintiff must “‘assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third

parties.’” *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 15–16 (Tex. 2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). Moreover, the plaintiff’s “alleged injury must be concrete and particularized, actual or imminent, not hypothetical.” *DaimlerChrysler Corp.*, 252 S.W.3d at 304–05 (citing *Raines v. Byrd*, 521 U.S. 811, 819 (1997)); see *Lujan*, 504 U.S. at 560–561; *Brown*, 53 S.W.3d at 305; *Tex. Ass’n of Bus.*, 852 S.W.2d at 444. “Subjective fear . . . does not give rise to standing.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 418 (2013). Here, Plaintiffs offered no more than speculative allegations and testimony regarding a subjective fear, insufficient to constitute an injury-in-fact.

Plaintiffs include one registered Texas voter and two organizations that purport to sue on behalf of members who “are eligible to vote by mail.” CR.178. But Plaintiffs do not want to return their ballots by mail. Instead, Plaintiffs want to utilize the suspension of Section 86.006(a-1), which expands the time period to allow an individual to hand-deliver a marked mail ballot to the early voting clerk’s office prior to election day, but without abiding by the Proclamation’s restrictions. The stated basis for this preference is the fear that the United States Postal Service (“USPS”) may not deliver ballots. See CR.189–91. Plaintiffs allege that USPS recommends that voters submit their absentee ballot applications by mail at least 15 days before Election Day (according to a Washington Post article cited in a footnote). CR.190.

But such “general data [] does not establish a substantial risk that Plaintiffs themselves will [be injured]; Plaintiff-specific evidence is needed.” *Stringer v. Whitley*, 942 F.3d 715, 722 (5th Cir. 2019).

When Plaintiffs filed this lawsuit on October 5, it was almost 30 days before the election—plenty of time for Plaintiffs (or their purported members) to send their ballots in by mail even according to conservative recommendations alleged in their pleadings (but not supported with evidence at the temporary injunction hearing). Alternatively, Plaintiffs (or their purported members) could go to a county drop-off site—either early or on election day. Or Plaintiffs (or their purported members) could vote early in person, starting October 13 (courtesy of the October 1 Proclamation). Or they could vote in person on election day.

The testimony at the temporary injunction hearing only further reinforced the lack of an injury-in-fact.⁴ It is undisputed that every voter who is eligible to vote by delivering a mail-in ballot in-person to an early voting office is also eligible to vote by mail. *E.g.* 2.RR.74; 2.RR.86–87. To demonstrate an actual or imminent injury,

⁴ The temporary injunction and plea to the jurisdiction hearing was held at the same time, and there was no clear demarcation between evidence offered for the purposes of the one or the other. As such, Appellants do not object to this Court’s consideration of witness testimony and hearing exhibits when reviewing the trial court’s ruling on their plea to the jurisdiction, and the relevant jurisprudence suggests that consideration of that evidence is proper. *See, e.g., Bland ISD v. Blue*, 34 S.W.3d 547, 550–55 (Tex. 2000) (holding that the trial court properly considered evidence when resolving the standing issue raised in the defendant’s plea to the jurisdiction, including oral testimony from live witnesses).

Plaintiffs had the burden of demonstrating more than a subjective fear that somehow they would not be able to timely cast a mail-in ballot or in an in-person ballot prior to or on November 3. *See Clapper*, 568 U.S. at 418. But Plaintiffs only evidence was vague, general “concerns” about, or “potential issues” with, voting by mail. 2.RR.100; 2.RR.140); *cf. LULAC*, 2020 WL 6023310, at *6 (criticizing federal district court for basing injunction on “speculate[on] about postal delays for hypothetical absentee voters”). These concerns, however sincere, fall short of the imminence required for a future injury. *See Garcia v. City of Willis*, 593 S.W.3d 201, 207 (Tex. 2019) (holding that the plaintiff lacked standing to challenge the red-light camera ordinance because it was merely speculative that he would be subjected to it again, despite already being fined once); *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 852 (Tex. 2000) (noting that for a future injury, the parties must demonstrate that the harm is imminent; mere speculation is insufficient).

Even the sole Plaintiff who is an actual voter, Robert Knetsch, did not demonstrate an injury-in-fact through his testimony. He testified that he already had his mail-in ballot as of the hearing date, three weeks before election day, 2.RR.139–40, and could return that ballot via mail at any time. 2.RR.151. He nonetheless claimed that he leaned towards not utilizing the mail-in ballot he received and would instead cast his ballot by voting early in person or on election day because “there’s

been discussions about potential issues with the postal service's ability to serve election mail." 2.RR.140. "Discussions about potential issues" falls far short of an imminent, non-speculative injury. *Compare id., with Gibson*, 22 S.W.3d at 852. Mr. Knetsch has a plethora of other voting options available to him. There is, for example, at least one early voting location roughly one mile from his home (and several others nearby). 2.RR.151–54. There are also eight locations open 24-hours on October 29. 2.RR.155; 3.RR.299. And even Harris County's in-person delivery office for mail-in ballots is only about 12 miles from Mr. Knetsch's home. 2.RR.141.

The other evidence offered by Plaintiffs failed to demonstrate that any voter would not be able to hand-deliver a mail-in ballot to the county's designated location for the November 3 election or that individuals would not be able to still cast an in-person ballot during the three weeks of early voting. Regarding in-person voting, Plaintiffs witnesses testified that there were "reasons to believe you're going to have crowded polls," 2.RR.78, but offered no evidence of actual crowds, much less crowds that could not be avoided with minor planning. The circumstantial evidence suggests just the opposite: If a voter does not want to vote their mail-in ballot by placing that ballot in the mail, crowded voting locations could be avoided based on the sheer number of locations and expansive hours for early voting. *See* 3.RR.284–295 (listing Harris County's 112 early voting locations, open 12 hours per day on

Mondays through Saturdays, and seven hours on Sundays); 3.RR.296 (listing Harris County’s eight 24-hour voting locations); 3.RR.297 (listing Travis County’s 37 early voting locations open for 12 hours Mondays through Saturdays, and six hours on Sundays).

Tellingly, even though the hearing occurred almost two weeks after the October 1 Proclamation went into effect, Plaintiffs offered no evidence that the single mail-in delivery site in any county was genuinely experiencing crowds. The only evidence in the record about the actual state of early voting offices indicated just the opposite. On October 8, almost a week after the October 1 Proclamation took effect, the Travis County Clerk declared on social media: “There’s no wait right now to hand deliver your mail-in ballot at 5501 Airport Blvd,” so “[s]top by today until 5 PM with your ID and mail-in ballot.” 3.RR.304.

Again, it is the plaintiffs’ burden to demonstrate an injury-in-fact, not the defendants’ burden to affirmatively prove the contrary. When, as here, the plaintiffs seek prospective relief, they must establish an “imminent” future injury to satisfy standing. *Lujan*, 504 U.S. at 564. The Supreme Court has repeatedly interpreted this to mean that a “threatened injury must be *certainly impending* to constitute injury in fact” — “[a]llegations of *possible* future injury are not sufficient.” *Clapper*, 568 U.S. at 409 (emphasis in original) (quotations omitted). Whether based on their pleadings

or the hearing evidence, Plaintiffs have not met their burden to show an imminent particularized injury, and therefore have not demonstrated standing.

2. Any purported injury is not traceable to or redressable by the Governor nor the Secretary who do not enforce the October 1 Proclamation.

To establish standing to challenge an executive order or, here, a proclamation, the plaintiff must sue the party responsible for the enforcement. *See In re Abbott*, 601 S.W.3d. at 812 (holding that Executive Order GA-13’s enforcement did not come from the Governor or the Attorney General and therefore the plaintiffs lacked standing to bring claims against them); *City of El Paso v. Tom Brown Ministries*, 505 S.W.3d 124, 147 (Tex. App.—El Paso 2016, no pet.) (holding that the City of El Paso lacked the requisite enforcement connection to the challenged statute); *Lone Starr Multi Theatres, Inc. v. State*, 922 S.W.2d 295, 297–98 (Tex. App.—Austin 1996, no writ) (holding that, in a statutory challenge, the plaintiff must sue the party “with authority to enforce [the] particular statute” because otherwise the declaration would be an advisory opinion). Because neither the Governor nor the Secretary is responsible for enforcing the October 1 Proclamation, Plaintiffs lack standing to bring their challenge to that proclamation by suing either state official.

a. The Governor does not enforce the October 1 Proclamation.

The plaintiff cannot establish standing by relying on the Governor’s generalized power or duty to enforce state law. *Okpalobi v. Foster*, 244 F.3d 405, 426

(5th Cir. 2001) (en banc). Instead, the plaintiff must plead that the named “official can act” with respect to the specific challenged law *and* that “there’s a significant possibility that he or she will act to harm [the] plaintiff.” *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019). Texas law “empowers the Governor to ‘issue,’ ‘amend,’ or ‘rescind’ executive orders, not to ‘enforce’ them.” *In re Abbott*, 956 F.3d 696, 709 (5th Cir. 2020) (quoting TEX. GOV’T CODE § 418.012). “The power to promulgate law is not the power to enforce it.” *Id.* (holding that Governor Abbott was not a proper defendant in the plaintiffs’ challenge to Executive Order GA-09). The same applies to the October 1 Proclamation.

The Texas Supreme Court has already held that a plaintiff seeking to enjoin enforcement of an executive order does not have standing to sue the Governor. In *In re Abbott*, the plaintiffs were judges who challenged GA-13, an executive order that “change[d] the rules applicable to judges’ decisions regarding pretrial bail” in response to the COVID-19 disaster. 601 S.W.3d at 805. The plaintiffs argued that they had standing to sue the Governor because he had “the power to enforce GA-13 against the judiciary” under the Disaster Act. *Id.* at 811. The Texas Supreme Court disagreed, concluding that there was “no credible threat of prosecution.” *Id.* at 812 (quotation marks omitted).

The Court noted that “[t]he State . . . readily concedes that the Governor cannot initiate such prosecutions” and that “the State in its briefing disclaims any intention by the Governor or the Attorney General to affirmatively enforce GA-13.” *Id.* Although the Court recognized that the executive order was not “toothless,” it focused its analysis on the State’s acknowledgment “that GA-13’s enforcement will not come in the form of criminal prosecutions by the Governor or the Attorney General.” *Id.* Because the Governor disavowed any authority to initiate prosecutions for violations of the executive order, the Court concluded that the plaintiffs lacked standing and that the trial court therefore lacked subject-matter jurisdiction to enjoin the Governor. *Id.* at 812–13.

As in *In re Abbott*, the Governor acknowledged that he has neither the authority nor the intention to enforce the October 1 Proclamation. Any injunction prohibiting the Governor from enforcing the October 1 Proclamation—something he cannot and will not do—would not redress any harm alleged by Plaintiffs. *See Abbott*, 601 S.W.3d at 807 (explaining that, to have standing, “[a] plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct *and likely to be redressed by the requested relief*” (emphasis added)). The redressability requirement for standing applies with equal force to requests for declaratory

judgments. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995); *Garcia*, 593 S.W.3d at 207–08.

In *Lone Starr Multi Theaters, Inc.*, this Court aptly summarized the standing requirement as follows: “In a declaratory judgment action, there must exist *between the parties* a justiciable controversy that will be determined by the judgment; otherwise the judgment amounts to no more than an advisory opinion, which a court does not have the power to give.” 922 S.W.2d at 297 (emphasis in original). This Court recognized that “the trial court in the present cause was without jurisdiction to declare the obscenity statutes unconstitutional and enjoin their enforcement because authority to enforce the statutes is constitutionally vested not in the attorney general but in district and county attorneys.” *Id.* at 298.

Similarly, in *OHBA Corp. v. City of Carrollton*, the plaintiff “filed suit seeking a declaratory judgment and an injunction regarding the City of Carrollton’s enforcement of its housing code.” 203 S.W.3d 1, 3 (Tex. App.—Dallas 2006, pet. denied). The Fifth Court of Appeals recognized that because the plaintiff had “merely a theoretical dispute,” the trial court “lacked subject matter jurisdiction over the declaratory judgment claim.” *Id.* at 6.

Like the plaintiffs in *Garcia*, *City of Carrollton*, and *Lone Starr Multi Theaters, Inc.*, Plaintiffs here have not established that their requested declaratory or injunctive

relief will remedy an actual or imminent harm. Because the Governor has no role in enforcing the October 1 Proclamation, any harm the proclamation may allegedly cause Plaintiffs cannot be redressed by declarations or injunctions entered against him. Accordingly, Plaintiffs lack standing to obtain injunctive or declaratory relief against the Governor.

b. The Secretary does not enforce the October 1 Proclamation.

The Secretary does not enforce the Governor’s Proclamations, including the October 1 Proclamation. As the Secretary’s Director of Elections testified, the Secretary lacks enforcement power— “[w]e are an assistance and advice agency.” 2.RR.232. As Justice Blacklock recently explained, the Secretary “neither conducts early voting nor receives hand-delivered mail-in ballots. Local election officials, not the Secretary of State, carry out the duties prescribed by the statutes in question.” *In re Hotze*, 20-0739, 2020 WL 5919726, at *4 (Tex. Oct. 7, 2020) (Blacklock, J., concurring). She is also not “responsible for the proclamation itself, which was issued unilaterally by the Governor.” *Id.*

For example, the Secretary could not stop Fort Bend County from establishing mail-in ballot delivery sites that were not authorized by state law, but could merely advise them that they were putting their election at risk of a contest. 2.RR.232. This is not to say that the Governor’s Proclamations are unenforceable. “A state, local,

or interjurisdictional emergency management plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted under the plan is an offense” punishable by up to \$1,000 or confinement in jail for a term not to exceed 180 days. TEX. GOV’T CODE § 418.173(a)–(b). And under the current Texas Emergency Management Plan, a failure to comply with a proclamation issued by the governor during a state of disaster is an offense punishable by a fine not to exceed \$1,000. S.CR.310.

Thus, if someone were to violate the October 1 Proclamation, that violation would be subject to criminal prosecution and a \$1,000 fine—in addition to whatever additional enforcement powers might be available under the Texas Election Code. But under no circumstance would the Secretary be the enforcing party. For all these reasons, “[a]ssuming for argument’s sake that the Governor’s [October 1] proclamation injures the [plaintiffs], that injury is not at the hands of the Secretary of State” and therefore the plaintiffs “cannot establish the ‘traceability’ element of standing.” *In re Hotze*, 2020 WL 5919726, at *4 (Blacklock, J. concurring).

To the extent, Plaintiffs’ argument rests on the contention that the Secretary enforces the Election Code writ large and Section 86.006(a-1) in particular, such contention lends little support. It is irrelevant because Plaintiffs challenge the Governor’s Proclamation, not a provision in the Election Code. And it is wrong

because, although the Secretary is the chief election officer for the State of Texas, the Texas Supreme Court has explained that the title is not “a delegation of authority to care for any breakdown in the election process.” *Bullock v. Calvert*, 480 S.W.2d 367, 372 (Tex. 1972). Texas law, then as now, charged the Secretary with “‘obtain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the election laws.’” *Id.* at 371 (quoting former TEX. ELEC. CODE art. 1.03); *accord* TEX. ELEC. CODE § 31.003. “Acting as the ‘chief election officer’ of the state,” the Secretary had “determined that uniformity [could not] be obtained . . . without the expenditure of state funds.” *Bullock*, 480 S.W.2d at 369. The Texas Supreme Court rejected the idea that the Secretary had an implied power to do whatever was necessary to achieve uniformity. *See id.* at 372.

That is, the Secretary’s title does not give her power to coerce local officials into ignoring the Governor’s proclamation. *See In re Stalder*, 540 S.W.3d 215, 218 n.9 (Tex. App.—Houston [1st Dist.] 2018, orig. proceeding) (noting that a party provided “no legal authority to suggest that, having received the Secretary of State’s assistance and advice in response to an inquiry, the party chair lacked the authority to then form and act upon her own ultimate legal judgment” (citation omitted)). For all these reasons, Plaintiffs lack standing to sue the Secretary.

3. ADL and Common Cause Texas lack standing.

The three plaintiffs in this case include only one actual voter. *See* CR.180–82. The other two plaintiffs are ADL and Common Cause Texas. Neither organization (“Plaintiff Organizations”) has standing. It does not meet the standard for so-called representative standing: that is, the standing of an organization to sue on behalf of its members. And while Texas courts generally follow federal standing jurisprudence, they have not recognized the concept of organizational standing, that is standing for an organization to sue in its own right. Even if the Court were to adopt such a theory (and it should not), Plaintiff Organizations have not met the standard set by federal courts.

a. Representative Standing.

Plaintiff Organizations have not established standing to sue on behalf of their members. Under the *Hunt* test for representative standing incorporated into this state’s jurisprudence by the Texas Supreme Court, “an association has standing to sue on behalf of its members when ‘(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’” *Texas Ass’n of Bus.*, 852 S.W.2d at 446 (quoting *Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977)). Here, Plaintiff Organizations lack standing.

To establish associational standing, the plaintiff must establish that it has “members” within the meaning of the associational standing test articulated in *Hunt*, 432 U.S. at 344 (requiring “indicia of membership”). In a membership organization under *Hunt*, the members “alone elect the members of the [organization’s leadership]; they alone may serve on the [body leading the organization]; they alone finance [the organization’s] activities, including the costs of this lawsuit, through assessments levied upon them.” *Id.* The Supreme Court has unequivocally held that the “requirement of naming the affected members has never been dispensed with” except “where *all* the members of the organization are affected by the challenged activity.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 498–99 (2009) (emphasis in original). Plaintiffs neither alleged nor demonstrated that they satisfy these requirements.

Starting with the pleadings, Plaintiffs’ petition did not identify any individual members at all, let alone members who have standing to sue. *See Summers*, 555 U.S. at 499 (requiring organizations to “identify members who have suffered the requisite harm” for injury-in-fact); *see also NAACP v. City of Kyle*, 626 F.3d 233, 237 (5th Cir. 2010) (requiring evidence of “a specific member”); *cf. Tex. Ass’n of Bus.*, 852 S.W.2d at 444 (“[W]e look to the more extensive jurisprudential experience of the federal courts on this subject for any guidance it may yield.”). ADL alleged it has

“approximately 23,000 constituents or supporters who are Texas residents,” some of whom are registered to vote in Texas and eligible to vote by mail. CR.181. Common Cause Texas alleged that it has 36,000 members and supporters in Texas, some of whom are registered to vote in Texas and eligible to vote by mail. CR.181. These allegations are insufficient because they do not show that someone with the indicia of membership required by *Hunt* is injured by the October 1 Proclamation.

Plaintiff Organizations’ associational standing argument only got worse at the temporary injunction hearing. ADL’s vice president acknowledged that ADL “is not a traditional membership organization.” 2.RR.121. Indeed, ADL represented to the IRS that it has no members or stockholders. 2.RR.121; 3.RR.311. Nor does ADL have members, stockholders, or other persons with the power to elect or appoint one or more members of the governing body. 2.RR.121–22; 3.RR.311. ADL’s “constituents” do not elect the leadership. 2.RR.122. ADL does not receive membership dues. 2.RR.123; 3.RR.308. And, of course, not every constituent of ADL is eligible to vote by mail ballot. 2.RR.123–24. In short, ADL lacks members as defined by the law, much less members who were injured by the October 1 Proclamation.

Similarly, Common Cause admitted that it does not have members who have the power to elect its leadership. 2.RR.72; 3.RR.404. Its decisions are not subject to

approval by anyone other than the governing body. 2.RR.72–73; 3.RR.404. Common Cause represents to the IRS that it collects zero dollars in membership dues. 2.RR.73; 3.RR.408. Common Cause did present the testimony of one self-described member, Joanne Richards. 2.RR.83. Ms. Richards testified that she could vote by mail and already had her ballot as of the hearing on October 13—three weeks before election day. 2.RR.84–84. In fact, Ms. Richards had planned to take it to the post office, but she was concerned about the potential delay. 2.RR.84–84. Even assuming that Ms. Richards is a member of Common Cause as defined by the relevant jurisprudence (and there is no evidence that she is), far from supporting an injury-in-fact, her testimony suggests the opposite. Three weeks is plenty of time to mail a ballot and, as discussed *supra*, a speculative fear leading to a self-inflicted injury is simply insufficient to confer standing. *See Ctr. for Biological Diversity v. EPA*, 937 F.3d 533, 541 (5th Cir. 2019) (quoting *Zimmerman v. City of Austin*, 881 F.3d 378, 389 (5th Cir. 2018)).

Because Plaintiff Organizations have not demonstrated that they have members as defined by the jurisprudence, let alone any specific member with standing to sue “in their own right,” they failed to demonstrate standing. *Tex. Ass’n of Bus.*, 852 S.W.2d at 446; *City of Kyle*, 626 F.3d at 237 (requiring “a specific member”); *see also, e.g., Ga. Republican Party v. SEC*, 888 F.3d 1198, 1203 (11th Cir.

2018) (holding that Georgia Republican Party lacked associational standing because it “has failed to allege that a specific member will be injured by the rule, and it certainly offers no evidence to support such an allegation”); *Draper v. Healey*, 827 F.3d 1, 3 (1st Cir. 2016) (Souter, J.) (“[T]he complaint did not identify any member of the group” and “where standing is at issue, heightened specificity is obligatory at the pleading stage”); *N.J. Physicians, Inc. v. President of U.S.*, 653 F.3d 234, 241 (3d Cir. 2011) (holding that the plaintiffs lacked standing because the only member identified in the complaint did not suffer an injury in-fact); *Disability Rights Wis., Inc. v. Walworth Cty. Bd. of Supervisors*, 522 F.3d 796, 804 (7th Cir. 2008) (“[A]dvocacy is only appropriately—and constitutionally—undertaken on behalf of another when that other has suffered an injury.”).

b. Organizational Standing.

Plaintiffs also cannot rely on organizational rather than associational standing because no such theory exists under state law, and even if it did, plaintiffs have not met the necessary requirements. The United States Supreme Court has recognized organizational standing as a separate ground for jurisdiction, but only in one circumstance: In *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), the Court allowed an entity that provided housing counseling and referral services to bring claims for damage to the organization under the federal Fair Housing Act. This is a

controversial ruling that has not been broadly applied even in federal courts. *See* Ryan Baasch, *Reorganizing Organizational Standing*, 103 Va. L. Rev. Online 18, 21–24 (2017).

Texas courts do not recognize organizational standing. Indeed, less than two years ago, this Court rejected the “contention that [an organization’s] advocacy expenditure” creates standing under Texas law. *Texas Dep’t of Family & Protective Servs. v. Grassroots Leadership*, No. 03-18-00261-CV, 2018 WL 6187433, at *5 (Tex. App.—Austin Nov. 28, 2018, no pet.) (mem. op.). This Court went on to explicitly “decline to expand *Havens* beyond such [Fair Housing Act] claims.” *Id.* Instead, the plaintiffs “plaintiffs must meet the particularized injury test adopted by the Texas Supreme Court and the United States Supreme Court since *Havens*.” *Id.*

Even if Texas courts recognized organizational standing based on diversions of resources, Plaintiff Organizations would still lack standing. That an organization has an “interest in a problem . . . is not sufficient” for standing, “no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem.” *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972). The alleged injury at issue in this case stems from a purported restriction on voters’ ability to cast their ballots. This injury is speculative for the reasons discussed *supra*, but even assuming for the sake of argument that this constitutes an imminent, non-

speculative injury, such injury that cannot be experienced by an organization except in an indirect, non-particularized manner insufficient to constitute an injury for an organization under Texas jurisprudence. *See id.*

Moreover, devoting resources to a problem does not automatically give an organization standing to demand that the government do more to address that problem. If it did, any group could “manufacture standing merely by inflicting harm on [itself],” such as by spending resources to address a problem and then complaining that it would not have had to do so if the government had already solved that problem. *Clapper*, 568 U.S. at 416 (refusing to let plaintiffs “manufacture standing”). Such a rule would allow “any sincere plaintiff [to] bootstrap standing by expending its resources in response to actions of another,” an outcome courts reject. *Ass’n for Retarded Citizens of Dall. v. Dall. Cty. Mental Health & Mental Retardation Ctr. Bd. of Trs.*, 19 F.3d 241, 244 (5th Cir. 1994).

That is why a diversion of resources “in response to an allegedly injurious law can itself be a sufficient injury to confer standing” only if “the change in plans [is] in response to a reasonably certain injury imposed by the challenged law.” *Zimmerman v. City of Austin*, 881 F.3d 378, 390 (5th Cir. 2018). A plaintiff “must . . . show that it would have suffered some other injury if it had not diverted resources to counteracting the problem.” *La Asociacion de Trabajadores de Lake Forest v. City of*

Lake Forest, 624 F.3d 1083, 1088 (9th Cir. 2010). Here, Plaintiff Organizations have not alleged or proved that they would have suffered an injury in fact if they had not allegedly diverted their resources.

B. The Governor and Secretary are entitled to sovereign immunity.

Even assuming Plaintiffs had standing, their claims would still be barred by sovereign immunity. “Sovereign immunity implicates a court’s subject matter jurisdiction.” *EBS Sols., Inc. v. Hegar*, 601 S.W.3d 744, 749 (Tex. 2020). The doctrine provides immunity both from suit and from liability. *Tex. Nat. Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 849, 853 (Tex. 2002). It preserves the separation of powers and protects public funds. *Univ. of Incarnate Word v. Redus*, 602 S.W.3d 398, 404 (Tex. 2020). In suits against the State, the plaintiff’s “burden to affirmatively demonstrate the trial court’s jurisdiction” “encompasses the burden of establishing a waiver of sovereign immunity.” *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019). A trial court’s ruling on a plea to the jurisdiction based on sovereign immunity is reviewed de novo. *EBS Sols., Inc.*, 601 S.W.3d at 749. Here, Plaintiffs neither alleged, nor did the evidence demonstrate, a viable claim that could overcome sovereign immunity.

It is well-established that public officials sued in their official capacities are protected by the same sovereign or governmental immunity as the governmental unit

they represent. *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 843–44 (Tex. 2007) (holding that “an official sued in his official capacity would assert sovereign immunity[,]” and that “[w]hen a state official files a plea to the jurisdiction, the official is invoking the sovereign immunity from suit held by the government itself”). Both the Governor and the Secretary in their official capacities are entitled to sovereign immunity. *Machete’s Chop Shop, Inc. v. Tex. Film Comm’n*, 483 S.W.3d 272, 275, 286 (Tex. App.—Austin 2016, no pet.). Plaintiffs do not maintain that any relevant waiver of sovereign immunity applies to their claims. Instead, Plaintiffs rely on the *ultra vires* exception to sovereign immunity. But the *ultra vires* exception does not apply.

“To fall within the *ultra vires* exception, a suit . . . must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.” *Heinrich*, 284 S.W.3d at 373. If the plaintiff has not actually alleged such an action, the claims remain barred by sovereign immunity from suit. *Andrade*, 345 S.W.3d at 11 (holding that the official-capacity defendant acted within his legal authority and was therefore still entitled to sovereign immunity). “[T]he jurisdictional inquiry may unavoidably implicate the underlying substantive merits of the case when, as often happens in *ultra vires* claims, the jurisdictional inquiry and the merits inquiry are intertwined.” *Chambers-Liberty Ctys. Navigation Dist. v. State*,

575 S.W.3d 339, 345 (Tex. 2019) (citing *Miranda*, 133 S.W.3d at 228). And even a viable *ultra vires* action does not permit monetary damages, which remain barred. *Heinrich*, 284 S.W.3d at 369–70.

Critically, “merely asserting legal conclusions or labeling a defendant’s actions as ‘ultra vires,’ ‘illegal,’ or ‘unconstitutional’ does not suffice to plead an ultra vires claim—what matters is whether the facts alleged constitute actions beyond the governmental actor’s statutory authority, properly construed.” *Tex. Dep’t of Transp. v. Sunset Transp., Inc.*, 357 S.W.3d 691, 702 (Tex. App.—Austin 2011, no pet; see also *Creedmoor-Maha Water Supply Corp. v. Tex. Comm’n on Envtl. Quality*, 307 S.W.3d 505, 515–16 (Tex. App.—Austin 2010, no pet.) (noting that “if the claimant is attempting to restrain a state officer’s conduct on the grounds that it is unconstitutional, it must allege facts that actually constitute a constitutional violation” to fall within the ultra vires exception).

1. Neither the Governor nor the Secretary acted *ultra vires*.

a. The Governor did not act *ultra vires* because the Disaster Act authorized the suspension of state law.

Assuming *arguendo* that Plaintiffs have standing, the October 1 Proclamation was within the Governor’s legal authority to issue. “The July 27 and October 1 Proclamations . . . must be read together to make sense” *LULAC*, 2020 WL 6023310, at *5. The Governor suspended Section 86.006(a-1) of the Texas Election

Code to add more days on which eligible voters may hand-deliver their marked mail ballots. Without this proclamation, a voter would only be able to deliver a marked mail ballot to the early voting clerk's office *while the polls are open on election day*. Compare S.CR.263, *with* TEX. ELEC. CODE § 86.006(a-1).

The Governor's suspension of section 86.006(a-1) was authorized by the Disaster Act of 1975, in which the Legislature expressly granted the Governor the authority to suspend “any *regulatory statute* prescribing the *procedures* for conduct of state business” when necessary to respond to a declared disaster. TEX. GOV'T CODE § 418.016(a) (emphases added); *see also* Att'y Gen. Op. KP-191 (2018) (concluding that Section 418.016(a) authorized a suspension of the Texas Election Code that yielded deadlines different than those provided by statute).

Significantly, suspension of Section 86.006(a-1) of the Texas Election Code is authorized by the constitutionally delegated authority in Section 418.016(a) of the Texas Government Code. That suspension allows voters to personally return their completed mail ballots at any time up to and including election day. It is “beyond any doubt” the measures adopted by the Governor “make it easier for eligible Texans to vote absentee.” *LULAC*, 2020 WL 6023310, at *5 (cleaned up). They allow people to return marked ballots days or weeks before election day—whereas without the suspension, the return of a marked mail ballot was permitted exclusively

while polls are open on November 3. *See* TEX. ELEC. CODE § 86.006(a-1). In other words, the Governor’s Proclamations added substantially more time in which eligible voters can hand-deliver a mail-in ballot leading up to Election Day, thereby providing voters with unprecedented voting options.

The October 1 Proclamation simply imposed certain conditions on the earlier suspension to avoid any ballot security concerns with this expansion of voting opportunities. The October 1 Proclamation made clear that the requirement in Section 86.006(a-1) of checking the voter’s identification has not been suspended—the presentation of an acceptable form of identification is still required. S.CR.271. Further, it made clear that on the days prior to election, poll watchers can be present, and ballots must be returned to a single early voting clerk’s office designated by the county—which ensures both the security of the site and that the votes would be counted. (As discussed above, there was a significant question whether certain sites proposed to be used in particular counties were legal.) The Governor’s authority to add limitations to a previously-issued suspension is supported by Sections 418.016(a) of the Texas Government Code, the same authority that supported the July 27 Proclamation’s suspension of the temporal restriction in Section 86.006(a-1) to election day.

Plaintiffs contend that the Governor acted *ultra vires* by limiting the scope of his waiver of Section 86.006(a-1) to a single site. Under their theory, the Governor has legal authority to suspend state law and expand a method of voting that—by statute—is only available on election day itself, but does *not* have legal authority to limit, or condition the use of, that suspension to a single early voting clerk’s office location. Plaintiffs characterize the October 1 Proclamation as a limitation on early voting locations where a voter may return a marked mail ballot. But Plaintiffs ignore the fact that the Governor is *expanding* the time period for early voting delivery locations from a single day to effectively an entire month. The Disaster Act does not limit the Governor’s use of his suspension power when choosing how to balance (1) expanding voting opportunities to reduce pressure on election day and thereby maintain social distancing during voting; and (2) in the context of such an expansion, maintaining ballot security.

The gravamen of Plaintiffs’ argument is that the Disaster Act only authorizes actions that are necessary for coping with a disaster. While the October 1 Proclamation still expands voting opportunities beyond what is authorized by the unsuspended state laws, Plaintiffs contend that it is not authorized by the Disaster Act because the expansion is allegedly scaled back compared to the July 27 Proclamation and thus cannot be justified by COVID-19 prevention. But this is not,

and cannot be, the law. By that misguided reasoning, any proclamation or executive order that scales back a prior restriction is unauthorized by the Disaster Act—from restaurant occupancy limits to nursing home visitation restrictions. The Governor is not limited to only considering impact of his actions *on the disaster* without considering its other real-world effects.

Plaintiffs' own purported expert—whose testimony Appellants objected to, and still object to, because he offered only legal conclusions—acknowledged that the Governor had the authority to issue the abbotJuly 27 Proclamation. 2.RR.163–63. On cross-examination, Plaintiffs' legal expert suggested, with some equivocation, that the Governor could have imposed the single early voting office limitation if only that limitation had been included his July 27 proclamation because it would have tied the suspension to a condition imposed by the emergency. *See* 2.RR.163–64. Plaintiffs' *ultra vires* claim rests entirely on chronology.

But the October 1 Proclamation *still* expands early voting options beyond what is permitted by Section 86.006(a-1). As such, it *still* reduces potential crowding on election day and all the other disaster-related government interests Plaintiffs laud in the context of the July 27 Proclamation and ignore when attacking the October 1 Proclamation. As the Fifth Circuit recently held in a similar context, the July 27 and October 1 Proclamations must be read together, as they collectively still represent

an expansion of voting opportunities beyond what is authorized by state law. *See LULAC*, 2020 WL 6023310, at *5 (“The Governor’s July 27 Proclamation effectively extended that hand-delivery option by forty days, and the impact of the October 1 Proclamation can be measured only against that baseline,” and the latter “represents merely a partial refinement of the bounds of a still-existing expansion of absentee voting opportunities.”).

Finally, regardless of whether Plaintiffs’ suspension arguments have merit, the Court should deny relief because the Proclamation can be upheld based on any power properly delegated to the Governor. The Proclamation generally invokes the Disaster Act, which expressly grants the Governor the authority to “control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area” and to issue proclamations that have the force and effect of law. TEX. GOV’T CODE §§ 418.012; 418.018(c). Thus, even if the suspension power did not exist, the Proclamation could be upheld based on the independent power to limit the occupancy of early voting sites while allowing all voters the chance to cast their votes

b. The Secretary did not act *ultra vires* because there is neither allegation nor evidence that she acted unlawfully.

Plaintiffs’ *ultra vires* claim against the Secretary of State fails for an even more fundamental reason: They have not alleged that she did anything wrong. An *ultra*

vires claim cannot be brought against a high-level official merely as an apex representative of the organization. *Hall v. McRaven*, 508 S.W.3d 232, 241 (Tex. 2017) (noting that “an *ultra vires* suit must lie against the ‘allegedly responsible government actor in his official capacity,’ not a nominal, apex representative who has nothing to do with allegedly *ultra vires* actions”). As Plaintiff’s *ultra vires* claims challenge the legality of the October 1 Proclamation, the claim cannot lie against the Secretary unless Plaintiffs contend she acted without legal authority or failed to perform a purely ministerial act in some other way (such as through enforcing the October 1 Proclamation). *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

But Plaintiffs have not alleged that she has taken any affirmative steps to do so, nor plausibly alleged that she has authority to enforce the October 1 Proclamation. To the contrary, the Secretary barely appears in Plaintiff’s First Amended Petition. As Justice Blacklock explained recently when presented with an analogous situation, “The petition never identifies what authority the Secretary of State has to override the Governor’s actions and ‘require’ or ‘allow’ all 254 counties to ignore the Governor’s proclamations” and “[e]ven if the Secretary thought the proclamation illegal, we are pointed to no authority that would authorize her—much less impose a duty on her—to issue her own orders to local election officials

contradicting the Governor’s.” *In re Hotze*, 2020 WL 5919726, at *6 (Blacklock, J. concurring). Here too, lacking even a contention that the Secretary has acted unlawfully, Plaintiffs’ *ultra vires* claim cannot lie against her under any theory of liability. And to the extent the Court considers the viability of the *ultra vires* claim against the Secretary, the Governor’s arguments regarding the proclamation’s lawfulness apply with equal force.

2. The October 1 Proclamation does not violate Article I, Section 3 of the Texas Constitution.

By alleging that the Proclamation violates the right to vote, Plaintiffs effectively argue that requiring counties to follow the practice that has been in place (until this year) since the enactment of Section 86.006(a-1)—one drop-off location per county—imposes an undue burden. That argument fails for two independent reasons: (1) the Proclamation does not encroach on the right to vote whatsoever; and (2) the Proclamation survives any *Anderson-Burdick* review because any burden is miniscule. The Fifth Circuit has already squarely rejected Plaintiffs’ arguments in a virtually identical challenge. *See LULAC*, 2020 WL 6023310, at *5–8.

There is no freestanding right to vote in whatever manner Plaintiffs deem most convenient. When considering a challenge to the limited availability of absentee ballots, the Supreme Court distinguished “the right to vote” from the “claimed right to receive absentee ballots.” *McDonald v. Bd. of Election Comm’rs of Chi.*, 394

U.S. 802, 807 (1969). It concluded that the plaintiffs’ inability to vote by mail did not implicate the right to vote because it did not “preclude[] [the plaintiffs] from voting” via other methods. *Id.* at 808. That holding dooms Plaintiffs’ *Anderson-Burdick* claim. *See also Crawford v. Marion County Election Bd.*, 553 U.S. 181, 209 (2008) (Scalia, J., concurring in the judgment) (“That the State accommodates some voters by permitting (not requiring) the casting of absentee or provisional ballots, is an indulgence—not a constitutional imperative that falls short of what is required.”).

Texas law provides several opportunities for eligible voters to cast their ballot. In-person delivery of a mail-in ballot is but one. Restrictions of such delivery thus “poses at most an inconvenience to a subset of voters (those who choose to vote absentee and physically drop-off their absentee ballot).” *A. Philip Randolph Inst. of Ohio v. Larose*, 20-4063, 2020 WL 6013117, at *2 (6th Cir. Oct. 9, 2020); *LULAC*, 2020 WL 6023310, at *6.

Texas has scheduled the early voting period to commence on October 13, 2020 and continue through the fourth day before election day. *See* Proclamation of the Governor, Oct. 1, 2020. This will furnish voters 19 days in which to cast an in-person ballot, including election day. Voters may cast their ballot in-person (including by curbside, if eligible) at any polling location in their home county during the early

voting period (and often on election day).⁵ Many voters will have the option of a hundred or more polling locations in which to choose,⁶ each one of which will be open (and is presently open) a minimum of eight hours each day. *See* TEX. ELEC. CODE § 85.064.

In addition, Texas provides multiple options by which qualified voters may deliver a marked mail ballot, including by mail, by common or contract carrier, and by in-person delivery. TEX. ELEC. CODE § 86.006(a). Because the October 1 Proclamation does not affect Plaintiffs' numerous other options for voting, it does not affect the "right to vote," only the "claimed right" to have multiple options for in-person delivery of a mail-in ballot. *McDonald v. Bd. of Elec. Comm'rs of Chi.*, 394 U.S. 802, 807 (1969). In *McDonald*, the plaintiffs were incarcerated persons who claimed a right to vote by mail because they could not "readily appear at the polls." 394 U.S. at 803. But incarcerated persons were not allowed to vote by mail. *Id.* at 804. The Supreme Court held that so long as the inmates had another means of voting, the "Illinois statutory scheme" would not "ha[ve] an impact on [their] ability to exercise the fundamental right to vote." *Id.* Though it might have been easier for an inmate to vote by mail, no state action "specifically disenfranchise[d]"

⁵ A list of all counties participating in the Countywide Polling Place Program can be found at the Secretary of State's websites, <https://www.sos.state.tx.us/elections/laws/countywide-polling-place-program.shtml> (last accessed October 21, 2020).

⁶ Harris County, for example, is hosting over 110 early voting polling locations. 3.RR.284–295.

the plaintiffs. *Id.* at 808. “It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots.” *Id.* 807.

Similarly, here, it is not the right to vote that is at stake, but a claimed right to deliver mail ballots in-person in multiple locations before election day. No such right exists. Moreover, the Governor’s Proclamations make voting easier, not harder. Plaintiffs cannot reasonably claim that in-person delivery of mail-in ballots for over a month (an option that did not exist before the Governor’s Proclamations) is impermissibly infringed by the Governor’s Proclamation clarifying its scope. Plaintiffs’ theory—that the July 27 Proclamation created a new “right to vote” that cannot be amended—would impose significant burdens on Texas’s ability to respond to the pandemic, and it is not required by *Anderson-Burdick*. *LULAC*, 2020 WL 6023310, at *6 (*citing LaRose*, --- F. App’x ----, 2020 WL 6013117 (quoting *Mays v. LaRose*, 951 F.3d 775, 779 (6th Cir. 2020))).

However, even if this Court concludes that the right to vote is implicated, the Proclamation easily passes muster under *Anderson-Burdick*, as any burden is *de minimis*, and the statute advances weighty State interests. As Plaintiffs acknowledge, “[w]hen resolving a challenge to a provision of Texas election laws under the state constitution, the Texas Supreme Court has adopted the balancing test set forth by the United States Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 789

(1983).” CR.196 (citing *State v. Hodges*, 92 S.W.3d 489, 496 (Tex. 2002)); *see also Bell v. Low Income Women of Texas*, 95 S.W.3d 253, 266 (Tex. 2002).

To apply the *Anderson-Burdick* test, a court must “first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate.” *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 387 (5th Cir. 2013) (quoting *Anderson*, 460 U.S. at 789). Then, the Court “must identify and evaluate the precise interest put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.* (quoting *Anderson*, 460 U.S. at 789). When a state election law provision imposes only “reasonable, nondiscriminatory restrictions” upon the First and Fourteenth Amendment rights of voters, “the state’s important regulatory interests are generally sufficient to justify” the restrictions. *Anderson*, 460 U.S. at 788.

Addressing each element in turn, the Governor’s actions *expanded* Plaintiffs’ ability to vote by mail. He did not curtail or burden it. Prior to his July 27 and October 1 proclamations, voters could deliver their ballots in-person only on election day. TEX. ELEC. CODE § 86.006(a-1). The Governor suspended that timing limitation, permitting voters to deliver their ballots to the early voting clerk as soon as their ballots were marked and ready. 3.RR.228. Significantly, the October 1 Proclamation

did not eliminate any practice previously available to voters during a general election including on election day. 2.RR.229 (the testimony of the Secretary's Director of Elections that the October 1 Proclamation "didn't affect the election day").

Further, the undisputed evidence shows that in-person delivery of a mail-in ballot became an option only in 2015, and no county or political subdivision offered more than one delivery location before this year. 2.RR.230. That is why the Fifth Circuit, applying the *Anderson-Burdick* test, rejected a virtually identical challenge. *LULAC*, 2020 WL 6023310, at *5. Far from the type of severe burden portrayed by Plaintiffs, the Court explained "one strains to see how it burdens voting at all. After all, the proclamation is part of the Governor's expansion of opportunities to cast an absentee ballot in Texas well beyond the stricter confines of the Election Code." *Id.* And the Plaintiffs *have not challenged* the ordinary rules established in section 86.006(a-1).)

Nor have they provided any evidence that voters will be unable to return their ballots by the deadline on account of the Proclamation. The Election Code permits voters to submit their application for a ballot by mail as early as January 1 of the calendar year in which the election will be held. For voters who qualify by reason of age or disability, the State offers voters the option to submit an annual application, meaning that voters will receive a ballot for every relevant election held that year. If

voters submit their application in a timely fashion, the Election Code requires the early voting clerk to distribute ballots to voters no less than 30 days before election day. Even assuming *arguendo* that complications from COVID-19 could cause intermittent delays, Plaintiffs have not shown that a month is insufficient to review, mark, and then return their ballots.

Even if the October 1 Proclamation imposes a burden, it is “*de minimis*” and thus subject to very low levels of scrutiny under *Anderson-Burdick*. See *LULAC*, 2020 WL 6023310, at *6. “Texans can (1) vote early in-person for an expanded period starting on October 13 (as opposed to the previous early-voting period starting on October 19); (2) hand-deliver a marked mail ballot during a forty-day period starting on September 19 (as opposed to the previous *one day*—Election Day—on which this was permitted); or (3) drop an absentee ballot in the mail.” *Id.* “In light of those options, the October 1 Proclamation’s partial refinement of one avenue for absentee voting does not amount to a ‘severe restriction’ on the right to vote.” *Id.* (quoting *Burdick*, 504 U.S. at 434).

In short, “mail-in ballot rules that merely make casting a ballot more inconvenient for some voters are not constitutionally suspect,” “even if ‘circumstances beyond the state’s control, such as the presence of the [coronavirus,]’ or, here, possible postal delays, make voting difficult.” *Id.* at *6

(quoting *Abbott*, 961 F.3d at 405); *see also McDonald*, 394 U.S. at 810 & n.8 (explaining that a State is not required to extend absentee voting privileges to all classes of citizens, even those for whom “voting may be extremely difficult, if not practically impossible,” such as persons caring for sick relatives or businessmen called away on business).

Moving on to the next *Anderson-Burdick* prong, the State’s interests more than justify the supposed burden placed on voters. Because the historical practice was either not to allow in-person delivery (before 2015) to have only one early voting clerk’s office location per county (2015–2020), there is little uniformity among early voting clerks in interpreting and implementing Section 86.006(a-1). This discrepancy has two chief consequences. First, procedures will vary between counties and even between delivery locations within a single county including precautions that must be taken to ensure the delivery process is both accessible and resistant to fraud. Second, the impromptu and haphazard implementation of additional delivery locations could result in disparate treatment among Texas voters because not every county has interpreted Section 86.006(a-1) the same way.

The potential problems with county implementation of multiple delivery locations is aptly demonstrated by the evidence regarding Fort Bend County. Specifically, Fort Bend intended to utilize delivery sites that, by the Secretary’s

determination, were not authorized by statute—even after the Secretary’s Director of Elections warned their Elections Administrator that they were risking those ballots going uncounted. 2.RR.230–31. The Fort Bend Elections Administrator even *agreed* with the Director’s legal assessment but indicated that he was going to proceed with the unauthorized sites regardless, even though it could provoke an election contest should any of the elections prove close. 2.RR.231–32. This not only undermines the security of the election, it threatens the disenfranchisement of any Fort Bend County voter who uses the additional sites.

The State has an acute interest in clarifying the law, including the Governor’s July 27 proclamation, and establishing uniformity in election administration. *See, e.g.,* TEX. ELEC. CODE § 31.003 (“The secretary of state shall obtain and maintain uniformity in the application, operation, and interpretation of this code and of the election laws outside this code.”). This interest is particularly cogent because counties are not obliged to report their early voting office expansion plans to the Secretary. 2.RR.232. The Secretary learned of Fort Bend’s plans and was able to at least *try* to avert the problems it will likely cause. But there are approximately 250 counties whose plans she does *not* necessarily know. Plaintiffs similarly offered no evidence regarding what is happening in those counties regarding ballot security. *See* 2.RR.108 (the testimony of Plaintiffs’ expert in election administration, who

acknowledged that he had only reviewed the ballot security plans of Travis and Harris County). The State has an interest in making sure that those counties are not adopting policies that could lead to an election contest and the rejection of tens of thousands of ballots.

Finally, vote-by-mail election fraud has proven to be a frequent and enduring problem in Texas. *See Crawford*, 553 U.S. 181, 196 n.12 (2008) (plurality); *Veasey v. Abbott*, 830 F.3d 216, 263 (5th Cir. 2016) (en banc). In the last Legislative Session alone, the Texas Legislature heard testimony from district attorneys and law enforcement about coordinated efforts to steal and harvest votes. S.CR.278–81, 291–94. Limiting the number of locations serving as the early voting clerk’s office reduces the risk of any criminal acts succeeding. *Crawford*, 553 U.S. at 196 (plurality) (“There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.”). It enables election personnel to focus their resources and attention on a single location, and it prevents any wrongdoers from forum shopping should one delivery site have fewer safeguards or its personnel exhibit less prudence. *See, e.g.*, 2.RR.247 (the Director of Elections’ testimony that it is easier to have poll watchers for multiple locations on a single day than for each of the 40 days before election day).

As the Fifth Circuit put it when discussing the October 1 Proclamation: “Opportunities for absentee voters to hand-deliver ballots ballooned from a pre-COVID *one* day (Election Day itself) to an in-COVID *forty* days.” *LULAC*, 2020 WL 6023310, at *7. “[T]he Governor’s goal of centralizing delivery locations, and deploying poll watchers there, in order to maximize ballot security” is a ‘reasonable, nondiscriminatory’ measure justified by Texas’s important interests in election integrity. *Id.* (quoting *Steen*, 732 F.3d at 388).

3. The October 1 Proclamation does not disenfranchise anyone, let alone not constitute arbitrary disenfranchisement.

Finally, Plaintiffs contend that the Proclamation violates equal protection principles, but this claim also fails as a matter of law. To start with, Plaintiffs’ reliance on *Bush v. Gore* is misplaced. 531 U.S. 98, 104-05 (2000). The opinion in *Bush v. Gore* was “limited to the present circumstances” because “the problem of equal protection in election processes generally presents many complexities.” *Id.* at 109. And as such the opinion has limited precedential value. *See League of United Latin Am. Citizens v. Abbott*, 951 F.3d 311, 317 (5th Cir. 2020) (doubting that *Bush v. Gore* could apply outside of those specific facts considering the Court’s “express pronouncement”).

The case is also readily distinguishable from the current controversy, as is the other case Plaintiffs cite, *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 665 (1966). In

Bush v. Gore, the Court confronted a unique situation, where the “standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.” 531 U.S. at 106. Here, in contrast, the Proclamation reestablishes a single universal rule that is easily administrable and applies statewide. The October 1 Proclamation was issued in part to eliminate disparate treatment and advance uniformity by requiring each county to have the same number of drop-off locations. In *Harper*, meanwhile, the Court overturned a direct poll tax, which invidiously discriminated between voters. 383 U.S. at 668.

Here, however, the argument is that the State has not gone far enough in removing incidental barriers to voting, not that the State imposed an additional qualification that invidiously denies voters the franchise. At most, Plaintiffs contend that the Proclamation will have a disparate impact on voters based on their geography. CR.200–01. But that triggers no more than rational-basis review, which the Proclamation more than satisfies. *See, e.g., Phillips v. Snyder*, 836 F.3d 707, 719 (6th Cir. 2016); *Decatur Liquors, Inc. v. District of Columbia*, 478 F.3d 360, 363 (D.C. Cir. 2007). “The proclamation establishes a uniform rule for the entire State: each county may designate one early voting clerk’s office at which voters may drop off mail ballots during the forty days leading up to the election.” *Hughs*, 2020 WL

6023310, at *8. “The fact that this expansion is not as broad as Plaintiffs would wish does not mean that it has illegally limited their voting rights.” *Id.*

The fact that the Proclamation would survive rational basis review leads to the final reason why Plaintiffs’ claim fails as a matter of law. Namely, an action taken by the government cannot arbitrarily disenfranchise voters when it advances legitimate government interests. Plaintiffs may disagree with these reasons, but the Proclamation is reasonable in light of the State’s interests in preserving uniformity and integrity in its elections.

C. Plaintiffs did not meet their burden to demonstrate entitlement to a temporary injunction.

Finally, for many of the same reasons, Plaintiffs did not establish their burden to obtain the extraordinary relief of a temporary injunction changing the rules of an election *after voting has started*. Under any circumstances, to obtain a temporary injunction, a plaintiff must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). This Court reviews a trial court’s grant of a temporary injunction for an abuse of discretion, but reviews its Plaintiffs’ entitlement for that relief de novo. *Tex. Educ. Agency v. Academy of Careers & Tech., Inc.*, 499 S.W.3d 130, 134 (Tex. App.—Austin 2016, no pet.) (internal citations

omitted). Here, Plaintiffs did not meet their burden to demonstrate subject-matter jurisdiction for all the reasons discussed *supra*. But even if this Court holds that the trial court had subject-matter jurisdiction, Plaintiffs neither demonstrated a probable relief to the relief sought, nor a probable, imminent, and irreparable injury. As such, they were not entitled to a temporary injunction. Finally, even if Plaintiffs showed that they were entitled to *an* injunction, this injunction was improper.

1. Plaintiffs did not demonstrate a probable right to the relief sought, nor a probable, imminent, and irreparable injury.

Plaintiffs did not demonstrate a probable right to the relief sought for all the reasons discussed in the context of jurisdiction. *See generally supra*. Even assuming Plaintiffs' mustered enough evidence to demonstrate an injury-in-fact in the context of standing, they did not demonstrate that such injury met the heightened showing for issuance of a temporary injunction. Take Mr. Knetsch, the only registered voter named in the petition. Assuming Mr. Knetsch has not already voted since the temporary injunction hearing, he could still put his ballot in the mail today (October 21, as of this filing) and USPS would have thirteen days to complete the delivery. It is not probable and imminent that his ballot will be lost. Indeed, the Postal Service never expressed any concern about ballots mailed before October 28.⁷

⁷ See Letter to Secretary Ruth Hughs by Thomas J. Marshall, USPS's general counsel and executive vice president, dated July 30, 2020, publicly accessible: <https://dfw.cbslocal.com/wp-content/uploads/sites/15909545/2020/08/DOC08062020.pdf>.

Mr. Knetsch could also vote in the multitude of other ways if he is committed to avoiding the postal system—including at the early voting location less than one mile from his home. 2.RR.151–53. After all, that location is open for 12 hours per day almost every day starting October 13—and for even longer than 12 hours during October 27–29. 2.RR.152–53; 3.RR.294. Plaintiffs have not met their burden to show that he will suffer a probable and imminent harm if he elected to vote in-person at that location during the roughly 119 hours it will be open between the filing of this brief and the close of early voting. *See* 3.RR.294 (Harris County’s Early Voting Schedule, listing the hours of operation between October 13 and October 30). Surely that location will experience a lull during those 119 hours. Perhaps Mr. Knetch could call ahead to confirm that there was no line before walking to the location from his home, weather permitting. *See* 2.RR.154 (Knetch’s testimony that he could and would walk to that location, where he normally voted in early voting, depending on the weather).

Plaintiffs’ own expert in election administration and ballot security conceded that he had heard of no reports of delays at any ballot return center since the October 1 proclamation went into effect. 2.RR.109–10 (“I am not aware of any delays at this point.”). Indeed, although the October 1 Proclamation had been in effect for nearly two weeks at the time of the October 13 temporary injunction hearing, Plaintiffs did

not produce any evidence showing long lines at mail-in ballot delivery locations. This omission is telling, and it only reinforces the speculative nature of Plaintiffs' case. Voters cannot vote by mail because of speculation about deficiencies in the postal service. And they cannot vote in person (either or by delivering their ballot to the single early voting office) because of speculation about crowds. But in both cases Plaintiffs lacked evidence to support their suppositions. As Plaintiffs did not make the requisite showing of a probable, imminent, and irreparable injury, they did not demonstrate entitlement to an injunction.

2. The public interest is disserved by the injunction sought.

Plaintiffs similarly have not shown that public interest favors the requested injunction, which changes the rules of an election well after voting has started and only a week before early voting is scheduled to be complete. In issuing the “extraordinary equitable remedy” of temporary injunctive relief, courts must “weigh the harm or injury to the applicant if the injunctive relief is withheld against the harm or injury to the respondent if the relief is granted.” *Seaborg Jackson Partners v. Beverly Hills Sav.*, 753 S.W.2d 242, 245 (Tex. App.—Dallas 1988, writ diss’d). A trial court must consider the equities on both sides, and abuses its discretion if it fails to do so. *See id.*; *NMTC Corp. v. Conarro*, 99 S.W.3d 865, 869 (Tex. App.—Beaumont 2003, no pet.). “[I]f public necessity, public health and convenience

outweigh any resulting private injury, or if granting the writ will cause great harm to the public, the writ will be refused.” *Mitchell v. City of Temple*, 152 S.W.2d 1116, 1117 (Tex. Civ. App.—Austin 1941, writ ref’d w.o.m.).

The State has a strong interest in ensuring orderly and secure elections. *See Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989) (Texas “indisputably has a compelling interest in preserving the integrity of its election process.”). State officials play an “active role” in managing elections, *see Storer v. Brown*, 415 U.S. 724, 730 (1974), and it would inflict a significant injury on the State if the Court were to prevent the State from prescribing the conduct of its elections. *Hollins*, 2020 WL 5919729, at *7; *see also, e.g., Maryland v. King*, 567 U.S. 1301, 1303 (2012) (“[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345 (1977) (citations omitted)). The “inability [for a State] to enforce its duly enacted [laws] clearly inflicts irreparable harm on the State.” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018); *accord State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015).

Those injuries are particularly acute here because both the Texas and “[t]he United States Supreme Court [have] repeatedly warned against judicial interference in an election that is imminent or ongoing. ‘Court changes of election laws close in

time to the election are strongly disfavored.’” *In re Hotze*, No. 20-0739, 2020 WL 5919726, at *3 (Tex. Oct. 7, 2020) (citing *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020)). These concerns are particularly significant here as the November 3 election has been underway for well over a week. Plaintiffs failed to demonstrate that their speculative injury overcomes the State’s interest in ensuring an orderly and secure election. Appellants respectfully ask the Court to reverse the trial court’s order granting Plaintiffs’ application for a temporary injunction.

3. The trial court’s chosen remedy is improper.

Finally, even if Plaintiffs could overcome all of the problems discussed above, the particular injunction issued by the district court was improper. The Texas Rules of Civil Procedure require that a district court issuing a preliminary injunction describe with specificity both the actions to be enjoined and the grounds for doing so. Tex. R. Civ. P. 683. This injunction does not do so. To the contrary, the trial court’s only statement that could be construed as a factual finding is the restriction “would likely needlessly and unreasonably increase risks of exposure to COVID-19 infections.”⁸ But Plaintiffs’ own medical expert acknowledged that the way to limit

⁸ The court also noted that the restriction would “burden potential voters’ constitutionally protected rights to vote,” but that is a legal conclusion that is incorrect for the reasons discussed above.

exposure to COVID-19 is for voters who are eligible to vote by mail to mail their ballots. 2.RR.129. Voters' ability to mail their ballots is unaffected by Governor's suspension of section 86.006(a-1).

And even if the Court were to conclude that the Proclamation is improper, the appropriate remedy would have been to enforce the statute—not to eliminate the suspension of the statute. *Cf. Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2352-53 (2020) (plurality op.) (discussing that remedy to alleged unconstitutional disparate treatment turns on intent of political branches); Tex. Gov't Code 311.032 (applying similar rule under Texas law). The result would be that voters cannot drop off ballots ahead of election day. TEX. ELEC. CODE § 86.006(a-1). Neither the Plaintiffs nor the courts get to pick and choose which piece of the Executive Order to enforce based on their own policy preferences.

PRAYER

For all these reasons, the Court should vacate the injunction, reverse the trial court's decision and dismiss this suit for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the electronic-filing manager in compliance with Texas Rule of Appellate Procedure 9.5(b) on this the October 21, 2020, to:

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Microsoft Word reports that this brief contains 14,357 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Benjamin L. Dower
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**In the Court of Appeals for the Third Judicial District
Austin, Texas**

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF
TEXAS; RUTH HUGHS, IN HER OFFICIAL CAPACITY AS TEXAS
SECRETARY OF STATE,

Appellants,

v.

THE ANTI-DEFAMATION LEAGUE AUSTIN, SOUTHWEST, AND
TEXOMA REGIONS; COMMON CAUSE TEXAS; ROBERT KNETSCH,

Appellees.

On Appeal from the
353d Judicial District Court, Travis County

APPENDIX

	Tab
1. Trial Court's Order.....	A
2. Tex. Const. Art. 1, Sec. 3.....	B
3. Tex. Gov't Code § 418.016.....	C
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5. Tex. Elec. Code § 86.006(a-1).....	E
6. July 27 Proclamation.....	F
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Tab A: Trial Court's Order

CAUSE NO. D-1-GN-20-005550

THE ANTI-DEFAMATION LEAGUE	§	
AUSTIN, SOUTHWEST, AND	§	IN THE DISTRICT COURT
TEXOMA REGIONS; COMMON	§	
CAUSE TEXAS; and ROBERT	§	
KNETSCH;	§	TRAVIS COUNTY TEXAS
<i>Plaintiffs,</i>	§	
	§	
v.	§	353RD JUDICIAL DISTRICT
	§	
GREG ABBOTT, in his official	§	
capacity as the Governor of Texas;	§	
RUTH HUGHS, in her official capacity	§	
as Texas Secretary of State,	§	
<i>Defendants.</i>	§	

ORDER GRANTING PLAINTIFFS' APPLICATION
FOR TEMPORARY INJUNCTIVE RELIEF

The above cause came before this Court for hearing on October 13, 2020. Plaintiffs, The Anti-Defamation League Austin, Southwest, and Texoma Regions; Common Cause Texas; and Robert Knetsch, appeared by its attorneys from Dechert LLP and the Brennan Center for Justice. Defendants, Governor Greg Abbott and Secretary of State Ruth Hughs, appeared, in their official capacities, by their attorneys from the Office of the Attorney General of Texas.

The Court has considered Plaintiffs' Application for Temporary Injunctive Relief and Plaintiffs' First Amended Application for Temporary Injunctive Relief, Defendants' Pleas to the Jurisdiction, the briefs submitted in support of and in opposition to said motions, and the evidence and arguments of counsel. After consideration of the foregoing, it is hereby ORDERED that

1. Defendant Abbott's Plea to the Jurisdiction is DENIED.
2. Defendant Hughs's Plea to the Jurisdiction is DENIED.

3. Plaintiffs' Application for Temporary Injunction is GRANTED, enjoining Defendants, their officers, agents, servants, employees, attorneys, and those inactive concert or participation with them from implementing or enforcing the following paragraph on page 3 of Defendant Abbott's October 1, 2020

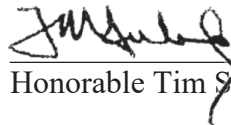
Proclamation:

“(1) the voter delivers the marked mail ballot at a single early voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 88.006(a-1) and this suspension,”

The limitation to a single drop-off location for mail ballots would likely needlessly and unreasonably increase risks of exposure to COVID-19 infections, and needlessly and unreasonably substantially burden potential voters' constitutionally protected rights to vote, as a consequence of increased travel and delays, among other things.

4. No bond is required.
5. Plaintiffs' Application for a Permanent Injunction is set for hearing on November 9, 2020, unless the parties and the Court find a mutually agreeable alternate date.

Signed this 15th day of October, 2020.



Honorable Tim Sulak

Automated Certificate of eService

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Status as of 10/15/2020 10:01 PM CST

Associated Case Party: Anti-Defamation League Austin, Southwest, and Texoma Regions

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Tab B: Tex. Const. Art. 1, Sec. 3

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article I. Bill of Rights (Refs & Annos)

Vernon's Ann.Texas Const. Art. 1, § 3

§ 3. Equal rights

Currentness

Sec. 3. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Sections 1 to 8 appear in this Volume

Editors' Notes

INTERPRETIVE COMMENTARY

2018 Main Volume

All of the constitutions of the State of Texas have contained provisions guaranteeing to all persons equality of rights, the terminology used in Article I, Section 3 being a readoption in the same language of Article I, Section 2 of the Constitutions of 1845, 1861 and 1866. Equality of rights is a concept of republicanism, indigenous to America, finding first expression in the Declaration of Independence. Section 3 of Article I sets forth two meanings of equality, that of equal protection of the laws, and that of political equality.

Under the United States Constitution, the guaranty of equal protection of the laws was originally assumed by the states, but upon addition of the fourteenth amendment of that constitution the duty was expressly imposed upon the states in the following words: "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws." Broadly speaking equal protection of the laws means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. All free men have equal rights in the eyes of the government. Justice Field has defined the principle well in the United States Supreme Court case of [Barbier v. Connolly](#), 5 S.Ct. 357, 113 U.S. 27, 28 L.Ed. 923 (1885). He declared: "that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burden should be laid upon one than are laid upon others in the same calling and conditions, and in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

Equal protection of the law does not prevent classifications in the law which subject some persons to a form of regulation from which others are relieved or confers upon some an advantage denied others. However equal protection does create a test for the classification and requires such to be reasonable, not arbitrary. The classification must be based on reasonable grounds to promote the general peace, good order, morals or health of the community, between classes substantially different from each other, and the classes established must include substantially all those who

stand in a similar position with respect to the law. Conversely, if the classification brings about unjust, unreasonable or arbitrary discrimination it will be unconstitutional.

The terminology of Section 3 declaring that “no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services” is said to declare the principle of equality in political rights. The Supreme Court of Texas has asserted that this principle constitutes “..... a denial of all title to individual privileges, honors, and distinctions from the community but for public services. It was directed against superiority of personal and political rights, distinctions of rank, birth, or station, and all claims of emoluments from the community by any man or set of men, over any other citizen of the State.” *Glasgow v. Terrell*, 100 T. 581, 102 S.W. 98 (1907).

Notes of Decisions (779)

O’CONNOR’S ANNOTATIONS

Klumb v. Houston Mun. Emps. Pension Sys., 458 S.W.3d 1, 13 (Tex.2015). “To state a viable equal-protection claim under the Texas Constitution, [EEs] must show they have been ‘treated differently from others similarly situated.’ Because neither a suspect classification nor a fundamental right is involved, [EEs] must further demonstrate that the challenged decision is not rationally related to a legitimate governmental purpose. In conducting a rational-basis review, we consider whether the challenged action has a rational basis and whether use of the challenged classification would reasonably promote that purpose. These determinations are ‘not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.’ *At 14*: [T]he pension board has a legitimate interest in preserving sources of pension funding that are adequate to meet the demands on the fund, which it may rationally accomplish by ensuring the City meets its contribution obligations to the pension system. [¶] The pension board also has a legitimate interest in policies that lessen the risk of overpaying pensioners or allowing them to ‘double dip.’ [¶] Because we conclude that any differentiation between employees is rationally related to legitimate governmental objectives, [EEs’] equal-protection claims fail as a matter of law.” *See also Owens Corning v. Carter*, 997 S.W.2d 560, 580 (Tex.1999) (Texas and U.S. equal-protection analyses are substantially similar); *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 846 (Tex.1990) (same).

Barshop v. Medina Cty. Underground Water Conserv. Dist., 925 S.W.2d 618, 631 (Tex.1996). “Generally, a classification under an equal protection challenge must only be rationally related to a legitimate state purpose. However, classifications impinging upon the exercise of a fundamental right or distinguishing between individuals on a suspect basis, such as race or national origin, are subject to strict scrutiny, requiring that the classification be narrowly tailored to serve a compelling government interest.”

Richards v. League of United Latin Am. Citizens, 868 S.W.2d 306, 314 (Tex.1993). “Fundamental rights ‘have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions.’”

Caleb v. Carranza, 518 S.W.3d 537, 543 (Tex.App.--Houston [1st Dist.] 2017, no pet.). “[R]ecognition of a class-of-one theory of equal protection in the public employment context--that is, a claim that the State treated an employee differently from others for a bad reason, or for no reason at all--is simply contrary to the concept of at-will employment.’ [T]he ... petition failed to plead a facially valid equal-protection claim by alleging that [EE], alone, suffered an adverse employment consequence as compared to other employees.” *See also Engquist v. Oregon Dept. of Agric.*, 553 U.S. 591, 605-06 (2008) (public EE’s claim must allege class-based discrimination; claim that EE has been irrationally singled out as “class of one” is not sufficient to support equal-protection claim).

Vernon's Ann. Texas Const. Art. 1, § 3, TX CONST Art. 1, § 3
Current through the end of the 2019 Regular Session of the 86th Legislature

Tab C: Tex. Gov't Code § 418.016

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 4. Executive Branch (Refs & Annos)
Subtitle B. Law Enforcement and Public Protection
Chapter 418. Emergency Management (Refs & Annos)
Subchapter B. Powers and Duties of Governor (Refs & Annos)

V.T.C.A., Government Code § 418.016

§ 418.016. Suspension of Certain Laws and Rules

Effective: September 1, 2013

[Currentness](#)

- (a) The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.
- (b) Upon declaration of a state of disaster, enforcement of the regulation of on-premise outdoor signs under Subchapter A, Chapter 216, Local Government Code,¹ by a municipality that is located in a county within, or that is located in a county adjacent to a county within, the disaster area specified by the declaration is suspended to allow licensed or admitted insurance carriers or licensed agents acting on behalf of insurance carriers to erect temporary claims service signage for not more than 30 days or until the end of the declaration of disaster, whichever is earlier.
- (c) A temporary claims service sign shall not:
- (1) be larger than forty square feet in size;
 - (2) be more than five feet in height; and
 - (3) be placed in the right of way.
- (d) At the end of the 30 days or the end of the declaration of disaster, whichever is earlier, the insurance carrier or its licensed agents must remove the temporary claims service signage that was erected.
- (e) On request of a political subdivision, the governor may waive or suspend a deadline imposed by a statute or the orders or rules of a state agency on the political subdivision, including a deadline relating to a budget or ad valorem tax, if the waiver or suspension is reasonably necessary to cope with a disaster.

(f) The governor may suspend any of the following requirements in response to an emergency or disaster declaration of another jurisdiction if strict compliance with the requirement would prevent, hinder, or delay necessary action in assisting another state with coping with an emergency or disaster:

- (1) a registration requirement in an agreement entered into under the International Registration Plan under [Section 502.091, Transportation Code](#), to the extent authorized by federal law;
- (2) a temporary registration permit requirement under [Section 502.094, Transportation Code](#);
- (3) a provision of Subtitle E, Title 7, Transportation Code², to the extent authorized by federal law;
- (4) a motor carrier registration requirement under Chapter 643, Transportation Code;
- (5) a registration requirement under Chapter 645, Transportation Code, to the extent authorized by federal law; or
- (6) a fuel tax requirement under the International Fuel Tax Agreement described by [49 U.S.C. Section 31701 et seq.](#), to the extent authorized by federal law.

(g) For the purposes of Subsection (f), “emergency or disaster declaration of another jurisdiction” means an emergency declaration, a major disaster declaration, a state of emergency declaration, a state of disaster declaration, or a similar declaration made by:

- (1) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. Section 5121 et seq.](#)); or
- (2) the governor of another state.

(h) To the extent federal law requires this state to issue a special permit under [23 U.S.C. Section 127](#) or an executive order, a suspension issued under Subsection (f) is a special permit or an executive order.

Credits

Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987. Amended by Acts 2009, 81st Leg., ch. 990, § 1, eff. June 19, 2009; Acts 2009, 81st Leg., ch. 1280, § 1.03a, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.008, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 3, eff. Sept. 1, 2013.

Notes of Decisions (3)

Footnotes

1 V.T.C.A., Local Government Code § 216.001 et seq.

2 V.T.C.A. Transportation Code § 621.001 et seq.

V. T. C. A., Government Code § 418.016, TX GOVT § 418.016

Current through the end of the 2019 Regular Session of the 86th Legislature

End of Document

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Tab D: Tex. Gov't Code § 418.018

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 4. Executive Branch (Refs & Annos)
Subtitle B. Law Enforcement and Public Protection
Chapter 418. Emergency Management (Refs & Annos)
Subchapter B. Powers and Duties of Governor (Refs & Annos)

V.T.C.A., Government Code § 418.018

§ 418.018. Movement of People

Currentness

- (a) The governor may recommend the evacuation of all or part of the population from a stricken or threatened area in the state if the governor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.
- (b) The governor may prescribe routes, modes of transportation, and destinations in connection with an evacuation.
- (c) The governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.

Credits

Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987.

V. T. C. A., Government Code § 418.018, TX GOVT § 418.018
Current through the end of the 2019 Regular Session of the 86th Legislature

End of Document

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Tab E: Tex. Elec. Code § 86.006(a-1)

Vernon's Texas Statutes and Codes Annotated
Election Code (Refs & Annos)
Title 7. Early Voting
Subtitle A. Early Voting
Chapter 86. Conduct of Voting by Mail (Refs & Annos)

V.T.C.A., Election Code § 86.006

§ 86.006. Method of Returning Marked Ballot

Effective: December 1, 2017 to November 30, 2020

[Currentness](#)

(a) A marked ballot voted under this chapter must be returned to the early voting clerk in the official carrier envelope. The carrier envelope may be delivered in another envelope and must be transported and delivered only by:

- (1) mail;
- (2) common or contract carrier; or
- (3) subject to Subsection (a-1), in-person delivery by the voter who voted the ballot.

(a-1) The voter may deliver a marked ballot in person to the early voting clerk's office only while the polls are open on election day. A voter who delivers a marked ballot in person must present an acceptable form of identification described by [Section 63.0101](#).

(b) Except as provided by Subsection (c), a carrier envelope may not be returned in an envelope or package containing another carrier envelope.

(c) The carrier envelopes of persons who are registered to vote at the same address may be returned in the same envelope or package.

(d) Each carrier envelope that is delivered by a common or contract carrier must be accompanied by an individual delivery receipt for that particular carrier envelope that indicates the name and residence address of the individual who actually delivered the envelope to the carrier and the date, hour, and address at which the carrier envelope was received by the carrier. A delivery of carrier envelopes is prohibited by a common or contract carrier if the delivery originates from the address of:

- (1) an office of a political party or a candidate in the election;
- (2) a candidate in the election unless the address is the residence of the early voter;

- (3) a specific-purpose or general-purpose political committee involved in the election; or
 - (4) an entity that requested that the election be held, unless the delivery is a forwarding to the early voting clerk.
- (e) Carrier envelopes may not be collected and stored at another location for subsequent delivery to the early voting clerk. The secretary of state shall prescribe appropriate procedures to implement this subsection and to provide accountability for the delivery of the carrier envelopes from the voting place to the early voting clerk.
- (f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the offense, was:
- (1) related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;¹
 - (2) physically living in the same dwelling as the voter;
 - (3) an early voting clerk or a deputy early voting clerk;
 - (4) a person who possesses a ballot or carrier envelope solely for the purpose of lawfully assisting a voter who was eligible for assistance under [Section 86.010](#) and complied fully with:
 - (A) [Section 86.010](#); and
 - (B) [Section 86.0051](#), if assistance was provided in order to deposit the envelope in the mail or with a common or contract carrier;
 - (5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; or
 - (6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope.
- (g) An offense under Subsection (f) is a Class A misdemeanor unless the defendant possessed the ballot or carrier envelope without the request of the voter, in which case it is a felony of the third degree. If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.
- (g-1) An offense under Subsection (g) is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

- (1) the defendant was previously convicted of an offense under this code;
- (2) the offense involved an individual 65 years of age or older; or
- (3) the defendant committed another offense under this section in the same election.

(h) A ballot returned in violation of this section may not be counted. If the early voting clerk determines that the ballot was returned in violation of this section, the clerk shall make a notation on the carrier envelope and treat it as a ballot not timely returned in accordance with [Section 86.011\(c\)](#). If the ballot is returned before the end of the period for early voting by personal appearance, the early voting clerk shall promptly mail or otherwise deliver to the voter a written notice informing the voter that:

- (1) the voter's ballot will not be counted because of a violation of this code; and
- (2) the voter may vote if otherwise eligible at an early voting polling place or the election day precinct polling place on presentation of the notice.

(i) In the prosecution of an offense under Subsection (f):

- (1) the prosecuting attorney is not required to negate the applicability of the provisions of Subsections (f)(1)-(6) in the accusation charging commission of an offense;
- (2) the issue of the applicability of a provision of Subsection (f)(1), (2), (3), (4), (5), or (6) is not submitted to the jury unless evidence of that provision is admitted; and
- (3) if the issue of the applicability of a provision of Subsection (f)(1), (2), (3), (4), (5), or (6) is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

Credits

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 431, § 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, § 28, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 1.18; Acts 1991, 72nd Leg., ch. 554, § 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, § 15, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 393, § 14, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 238, § 1, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., ch. 1159 (H.B. 2449), § 1, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 1050 (H.B. 1927), § 7, eff. Sept. 1, 2015; Acts 2017, 85th Leg., 1st C.S., ch. 1 (S.B. 5), § 12, eff. Dec. 1, 2017.

Editors' Notes

TEXAS PROCLAMATION (JULY 27, 2020)—2019 TX EO P20-17

<[See [Texas League of United Latinamerican Citizens v. Abbott](#), 2020 WL 5995969 (W.D. Tex. 10/9/20), enjoining implementation of this paragraph “(1) the voter delivers the marked mail ballot at a single early

voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 86.006(a-1) and this suspension;”]>

<[See, also, *Texas League of United Latin American Citizens v. Hughs*, --- F.3d ----2020 WL 6023310 (5th Cir. 2020)], granting the Texas Secretary of State’s emergency motion for stay pending appeal.]>

<TO ALL TO WHOM THESE PRESENTS SHALL COME: >

<WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under [Section 418.014 of the Texas Government Code](#) that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and >

<WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and >

<WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and >

<WHEREAS, pursuant to legislative authorization under Chapter 418 of the Texas Government Code, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and >

<WHEREAS, [Section 41.001\(a\) of the Texas Election Code](#) provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on November 3, 2020; and >

<WHEREAS, I issued a proclamation on March 18, 2020, suspending [Sections 41.0052\(a\) and \(b\) of the Texas Election Code](#) and [Section 49.103 of the Texas Water Code](#) to the extent necessary to allow political subdivisions that would otherwise have held elections on May 2, 2020, to move their general and special elections for 2020 only to the November 3, 2020 uniform election date; and >

<WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and >

<WHEREAS, as counties across Texas prepare for the upcoming elections on November 3, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and >

<WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day for the November 3, 2020 elections, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and >

<WHEREAS, [Section 85.001\(a\) of the Texas Election Code](#) provides that the period for early voting by personal appearance begins 17 days before election day; and >

<WHEREAS, Section 86.006(a-1) of the Texas Election Code provides that a voter may deliver a marked mail ballot in person to the early voting clerk’s office while the polls are open on election day; and >

<WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that for the November 3, 2020 elections, strict compliance with the statutory requirements in [Sections 85.001\(a\)](#) and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person; and >

<WHEREAS, pursuant to [Section 418.016 of the Texas Government Code](#), the legislature has expressly authorized the Governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster; >

<NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend [Section 85.001\(a\) of the Texas Election Code](#) to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day. I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day. >

<The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law. >

[Notes of Decisions \(16\)](#)

Footnotes

¹ [V.T.C.A., Government Code § 573.021 et seq.](#)
V. T. C. A., Election Code § 86.006, TX ELECTION § 86.006
Current through the end of the 2019 Regular Session of the 86th Legislature

Tab F: July 27 Proclamation



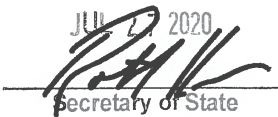
GOVERNOR GREG ABBOTT

July 27, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

2:00pm O'CLOCK

JUL 27 2020


Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation suspending certain statutes concerning elections on November 3, 2020.

The original of this proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor
GSD/gsd

Attachment

PROCLAMATION
BY THE
Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, pursuant to legislative authorization under Chapter 418 of the Texas Government Code, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, Section 41.001(a) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on November 3, 2020; and

WHEREAS, I issued a proclamation on March 18, 2020, suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise have held elections on May 2, 2020, to move their general and special elections for 2020 only to the November 3, 2020 uniform election date; and

WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and

WHEREAS, as counties across Texas prepare for the upcoming elections on November 3, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and

WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day for the November 3, 2020 elections, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:00 PM O'CLOCK

JUL 27 2020

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day; and

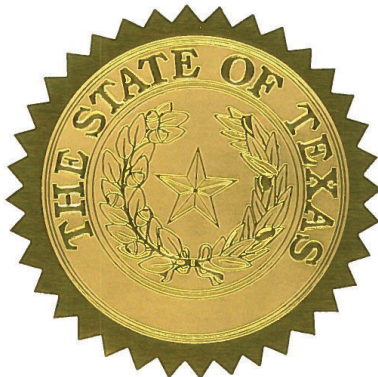
WHEREAS, Section 86.006(a-1) of the Texas Election Code provides that a voter may deliver a marked mail ballot in person to the early voting clerk's office while the polls are open on election day; and

WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that for the November 3, 2020 elections, strict compliance with the statutory requirements in Sections 85.001(a) and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the legislature has expressly authorized the Governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Section 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day. I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day.

The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.



IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of July, 2020.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor of Texas

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:00 PM O'CLOCK

JUL 27 2020

ATTESTED BY:

A handwritten signature in black ink, appearing to read 'R. Hughs', written over a horizontal line.

RUTH R. HUGHS
Secretary of State

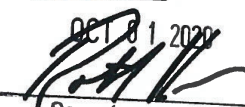
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SECRETARY OF STATE
2:00 pm O'CLOCK
JUL 27 2020

Tab G: October 1 Proclamation



GOVERNOR GREG ABBOTT

October 1, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00 AM O'CLOCK
OCT 01 2020

Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

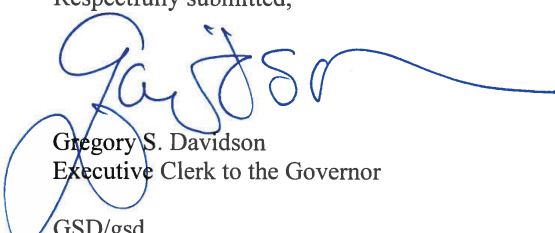
Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation suspending certain statutes concerning the November 3, 2020 elections.

The original of this proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor
GSD/gsd

Attachment

PROCLAMATION
BY THE
Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, pursuant to legislative authorization under Chapter 418 of the Texas Government Code, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, on July 27, 2020, I issued a proclamation suspending certain provisions of the Texas Election Code to provide additional time for early voting and to provide additional time in which a voter can deliver a marked mail ballot in person to the early voting clerk's office, such that this may be done prior to and including on election day; and

WHEREAS, the suspension of the limitation on the in-person delivery of marked mail ballots, as made in the July 27, 2020 proclamation, merely increased the amount of time for an eligible voter to return a marked mail ballot in person to the early voting clerk's office and did not suspend or otherwise affect the other applicable requirements that a voter must comply with when returning a marked mail ballot, including presenting an acceptable form of identification described by Section 63.0101 of the Election Code; and

WHEREAS, an amendment to the suspension of the limitation on the in-person delivery of marked mail ballots, as made in the July 27, 2020 proclamation, is appropriate to add ballot security protocols for when a voter returns a marked mail ballot to the early voting clerk's office; and

WHEREAS, Section 41.001(a) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on November 3, 2020; and

WHEREAS, I issued a proclamation on March 18, 2020, suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise have held elections on May 2, 2020, to move their general and special elections for 2020 only to the November 3, 2020 uniform election date; and

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SECRETARY OF STATE
11:00AM O'CLOCK

OCT 01 2020

WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and

WHEREAS, as counties across Texas prepare for the upcoming elections on November 3, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and

WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day for the November 3, 2020 elections, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day; and

WHEREAS, Section 86.006(a-1) of the Texas Election Code provides that a voter may deliver a marked mail ballot in person to the early voting clerk's office while the polls are open on election day; and

WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that for the November 3, 2020 elections, strict compliance with the statutory requirements in Sections 85.001(a) and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders hav[ing] the force and effect of law;" and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the legislature has expressly authorized the governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster; and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;"

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Section 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00 AM O'CLOCK

OCT 01 2020

by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day.

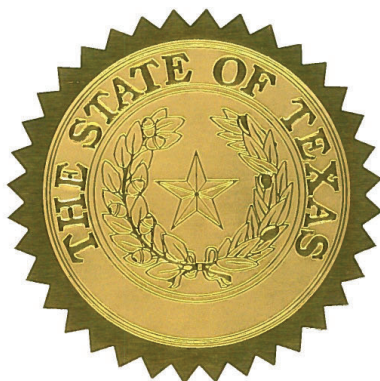
I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day; provided, however, that beginning on October 2, 2020, this suspension applies only when:

- (1) the voter delivers the marked mail ballot at a single early voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 86.006(a-1) and this suspension; and
- (2) the early voting clerk allows poll watchers the opportunity to observe any activity conducted at the early voting clerk's office location related to the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension, including the presentation of an acceptable form of identification described by Section 63.0101 of the Election Code by the voter.

Any poll watchers operating under this suspension must comply with the requirements of Chapter 33 of the Election Code as if they were serving at an early voting polling place, as applicable to observing the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension.

Any marked mail ballot delivered in person to the early voting clerk's office prior to October 2, 2020, shall remain subject to the July 27, 2020 proclamation.

The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.



IN TESTIMONY WHEREOF, I
have hereto signed my name and
have officially caused the Seal of
State to be affixed at my office in
the City of Austin, Texas, this the
1st day of October, 2020.

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive style.

GREG ABBOTT
Governor of Texas

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00 AM O'CLOCK

OCT 01 2020

ATTESTED BY:

A handwritten signature in black ink, appearing to read "R. Hughs", is written over a horizontal line.

RUTH R. HUGHS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00 AM O'CLOCK
OCT 01 2020

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

La Shanda Green on behalf of Benjamin Dower
Bar No. 24082931
lashanda.green@oag.texas.gov
Envelope ID: 47386155
Status as of 10/21/2020 12:10 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Lindsey Cohan	24083903	lindsey.cohan@dechert.com	10/21/2020 11:53:32 AM	SENT
Michael Abrams		michael.abrams@oag.texas.gov	10/21/2020 11:53:32 AM	SENT
Kathleen Morris		kathleen.morris@oag.texas.gov	10/21/2020 11:53:32 AM	SENT
Benjamin Dower		Benjamin.Dower@oag.texas.gov	10/21/2020 11:53:32 AM	SENT
Myrna Perez		perezm@brennan.law.nyu.edu	10/21/2020 11:53:32 AM	SENT
LASHANDA GREEN		lashanda.green@oag.texas.gov	10/21/2020 11:53:32 AM	SENT
Kristy Alonzo		kalonzo@thompsonhorton.com	10/21/2020 11:53:32 AM	SENT
Lanora Pettit		lanora.pettit@oag.texas.gov	10/21/2020 11:53:32 AM	SENT
Wolfgang PHirczy de Mino, PhD		wphdmphd@gmail.com	10/21/2020 11:53:32 AM	SENT
Erik Snapp		Erik.Snapp@dechert.com	10/21/2020 11:53:32 AM	SENT
Maximillian Feldman		feldmanm@brennan.law.nyu.edu	10/21/2020 11:53:32 AM	SENT
neil steiner		neil.steiner@dechert.com	10/21/2020 11:53:32 AM	SENT
Jessica Witte		jwitte@thompsonhorton.com	10/21/2020 11:53:32 AM	SENT